

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 63

(Senators Kelley and Lam)

Education, Health, and Environmental Affairs

General Assembly – Residency Requirement – Enforcement – Factors

This bill specifies various factors that the State Board of Elections (SBE) or any court must consider when determining whether a candidate for or member of the General Assembly meets the residency requirements of the Maryland Constitution. The bill further specifies that a candidate or member who is an active-duty member of the military may not be considered to have established or abandoned residency solely based on where the candidate or member is stationed. The General Assembly counsel must annually review each senator and delegate's compliance with residency requirements. The bill does not impose any additional requirements on a candidate or member beyond those imposed by the Maryland Constitution, as specified.

Fiscal Summary

State Effect: General fund expenditures for SBE are potentially affected, as discussed below. Otherwise, the bill's requirements can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: The bill does not directly affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: Factors to be considered when determining whether a candidate for or member of the General Assembly is a resident of a district include:

- the address listed on the member's driver's license or State-issued identification card;
- the street address where the candidate or member receives mail (unless the address is a post office box), and whether the candidate or member receives mail at the address claimed as the candidate or member's residence;
- whether the building claimed as the candidate or member's residence is zoned for residential use and complies with applicable building codes;
- whether the candidate or member owns, rents, or leases residential property claimed as the candidate or member's residence;
- whether there is proof that the candidate or member has paid for and used utilities at the address claimed as the candidate or member's residence;
- whether the school registration of any minor children of the candidate or member lists the address claimed as the candidate or member's residence;
- whether the candidate or member's spouse or any other immediate family members reside at the address claimed as the candidate or member's residence;
- whether the address claimed as the candidate or member's residence is also listed as the candidate or member's residence in other specified records, including employment records, motor vehicle registrations or titles, and income tax returns; and
- whether the candidate or member is an active-duty member of the military.

Current Law: Section 5-202 of the Election Law Article specifies that a candidate for public or party office must be a registered voter at an address that satisfies any residence requirement for the office that is imposed by law and, in the case of a party office, by party rules.

Challenging a Candidate's Residency

As authorized under § 5-305 of the Election Law Article, a registered voter who is a resident of the district or other geographical area in which a candidate is seeking office may file a petition with the appropriate circuit court to challenge the candidate's residency, as specified. The provision applies only to a petition that will affect the right of a candidate to have the candidate's name appear on the ballot in a primary or general election. A petition must be filed within 15 days after the certificate of candidacy filing deadline. Judicial review of a petition that is filed in accordance with these provisions must be expedited to the extent necessary in consideration of the deadlines established by law, and no longer than seven days from the date the petition is filed. An appeal must be taken directly to the Court of Appeals within five days after the date of the decision of the circuit court, and the Court of Appeals must give priority to hear and decide the appeal as expeditiously as the circumstances require.

Residence Requirements for Senators and Delegates

Pursuant to Article III, Section 9 of the Maryland Constitution (which is subject to amendment at the 2022 general election, as discussed below), a person is eligible to serve as a senator or delegate if the person (1) is at least age 25 or 21, respectively; (2) is a citizen of the State; (3) has resided in the State for at least one year preceding election; and (4) has resided in the district to which he or she has been elected to represent for six months preceding election or, if the district has been established for less than six months prior to the date of election, as long as the district has been established. The Maryland Court of Appeals has held that the term “resided” in Article III, Section 9 means “domiciled.” *Blount v. Boston*, 351 Md. 360 (1998); *Roberts v. Lakin*, 340 Md. 147 (1995); *Bainum v. Kalen* 272 Md. 490 (1974).

Chapter 808 of 2021 proposes a constitutional amendment that, if approved by the voters at the November 2022 general election, alters residency requirements for the office of senator or delegate beginning in 2024. Specifically, the proposed constitutional amendment requires, beginning January 1, 2024, a person to have *maintained a primary place of abode* in the district he or she has been chosen to represent for at least six months preceding his or her election or, if applicable, as long as the district has been established.

State Fiscal Effect: As noted above, the bill requires the General Assembly counsel to annually review each senator and delegate’s compliance with residence requirements. The Office of the Attorney General advises that the requirement can be handled with existing resources, assuming that the requirement is satisfied by a cursory review. However, to the extent the bill requires a more demanding review, it may impact the office’s ability to timely handle other legislative requests.

It is unclear to what extent the bill requires SBE to review and evaluate compliance with residence requirements, in accordance with the several factors specified in the bill, when a candidate for the General Assembly files for candidacy. SBE advises that, currently, with respect to residence requirements, it accepts a certificate of candidacy if the candidate is registered to vote in the district in which the candidate seeks election. SBE further advises that it does not have the capacity to extensively review candidates’ compliance with residence requirements. However, it is not clear whether the bill requires SBE to conduct such an extensive review of each certificate of candidacy, or whether the bill requires the specified factors to be considered *only when a candidate or member’s residence is challenged*.

To the extent that SBE must collect and review significant additional documentation evidencing residence when an individual files for candidacy for the General Assembly, one-time computer programming changes, additional temporary administrative staff support during the affected filing periods, and/or additional legal counsel may be needed.

Thus, general fund expenditures are potentially affected as early as fiscal 2025, in advance of the 2026 general election, and in each subsequent election cycle. In the absence of clarity regarding SBE's role, however, a more precise estimate of potential costs is not feasible but may be significant.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 320 (Delegate Wilkins) - Ways and Means.

Information Source(s): Office of the Attorney General; Maryland State Board of Elections; Department of Legislative Services

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