

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 1007

(Senator Hayes)

Executive Nominations

Health and Government Operations

State Government - Executive Appointments

This emergency bill establishes that the Governor, with respect to appointments that require Senate confirmation, must submit a nomination to the Senate to fill the office within 40 days from the start of the regular session of the General Assembly if the term of the office will end during the next upcoming Senate recess. The bill also establishes conditions for the Governor to submit nominations when the Governor becomes aware that a term of an office will end during the next upcoming Senate recess. An officer may not continue to serve more than four years after the officer's term expires. However, the bill allows the Governor, subject to specified provisions of the Election Law and Education Articles, to appoint members of the State Board of Elections (SBE) and the Accountability and Implementation Board (AIB) during the recess of the Senate regardless of whether the term of office of a member will end during the next upcoming recess. **Except for provisions related to appointment of members to SBE and AIB, the bill's provisions take effect January 1, 2025.**

Fiscal Summary

State Effect: As the bill largely clarifies and reiterates constitutional and statutory provisions, there should not be a fiscal impact. Nevertheless, as current practice – over many Administrations – does not conform to those provisions, there is a significant operational impact on the Governor's Office to come into compliance, including possibly needing additional staffing and a new tracking system to do so, as discussed below. Revenues are not affected.

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

Small Business Effect: None.

Analysis

Bill Summary: If the term of an office that requires Senate confirmation will end during the next upcoming recess of the Senate, the Governor must submit a nomination to the Senate to fill the office within 40 days from the start of the regular session of the General Assembly. If the Governor becomes aware that the term of an office will end during the next upcoming recess of the Senate more than 40 days after the commencement of the regular session of the General Assembly but before the legislature adjourns *sine die*, the Governor may submit a nomination to the Senate to fill the office only if the Senate consents to examine the nominee, subject to its rules. An individual nominated more than 40 days after the commencement of the regular session of the General Assembly but before the legislature adjourns *sine die* is not eligible for confirmation if there is an incumbent in the office unless the Senate consents to examine the nominee, subject to its rules.

The bill also establishes that, at the end of a term, an officer continues to serve until a successor is appointed and qualifies. An officer may not continue to serve more than four years after the end of the officer's term.

The bill makes technical and clarifying changes to provisions related to recess appointments (described below).

Current Law:

State Board of Elections and the Accountability and Implementation Board – Generally

SBE must manage and supervise elections in the State and ensure compliance with the requirements of the Election Law Article and any applicable federal laws by all persons involved in the elections process. SBE is comprised of five members, appointed by the Governor with the advice and consent of the Senate, with staggered terms of five-years.

Among other things, Chapter 36 of 2021 established AIB as an independent agency responsible for the oversight of the Blueprint for Maryland's Future and evaluating the outcomes against the goals of the Blueprint during its implementation period. AIB is led by a seven-member board, appointed by the Governor with the advice and consent of the Senate, with staggered terms of six years.

Constitutional Provisions

Under Article II, § 13 of the Maryland Constitution, all civil officers nominated by the Governor and subject to confirmation by the Senate must be nominated to the Senate within 40 days from the start of each regular session of the legislature.

With respect to positions that require Senate confirmation, Article II, § 11 of the Maryland Constitution states that, in case of any vacancy during the recess of the Senate, the Governor must appoint a suitable person to the office (often referred to as a “recess appointment”). The recess appointment remains in effect until the end of the next session of the legislature, or until another person is appointed to the same office, whichever occurs first. The Governor must submit the nomination of the recess appointee to the Senate on the first day of the next regular meeting of the Senate. Under Article II, § 12 of the Maryland Constitution, a person rejected by the Senate may not be nominated for the same office at the same session, unless at the request of the Senate, nor can the person be reappointed during the subsequent Senate recess.

Recess Appointments

An individual who was appointed to fill a vacancy in an office during the recess of the Senate or who was nominated to fill a vacancy in an office during a regular session of the Senate may not (1) be nominated for the same office at the same session, unless requested by the Senate; (2) be appointed to the same office during the recess of the Senate; or (3) continue to serve in the office or be designated to serve in an acting capacity for the same office after the adjournment of the regular session of the Senate at which the nomination was made. These provisions apply only if (1) the Governor withdrew the nomination during the regular session of the Senate at which the nomination was made; (2) the Senate failed to act on the nomination before the Senate adjourned the regular session of the Senate at which the nomination was made and the individual was not reappointed to the office by the Governor; (3) the individual withdrew the individual’s nomination; (4) the Governor fails to make the nomination on the first day of the regular session of the Senate if required under the Maryland Constitution; or (5) the individual is not confirmed by the Senate and is designated by the Governor to fill the vacancy in an acting capacity. *The bill* makes technical and clarifying changes to these conditions.

Limits of Rejected Appointees

An individual who is prohibited from continuing to serve under the conditions specified above may not, in any capacity, carry out responsibilities of the office or make representations that the individual serves in the office or is legally authorized to carry out the responsibilities of the office. If the holder is in an office on a public body for which no salary is provided, any votes cast by an individual who, at the time the vote is conducted by the public body, is prohibited from continuing to serve in the office under the provisions specified above may not be counted. The presence of the individual may also not be counted for purposes of a quorum.

Other Provisions for Appointees

An individual who is designated to serve in an acting capacity to fill a vacancy in an office for which an appointment is required to be made with the advice and consent of the Senate may not serve in the office for more than 275 days after the date the designation was made. An individual may not continue to serve in an acting capacity after the adjournment of a regular session of the Senate if (1) the individual was serving in the acting capacity before the start of the regular session and (2) the individual was not nominated to fill the vacancy in the office during that regular session. In addition, the individual may not receive any compensation, including a salary or reimbursement for expenses, related to serving in the office or carrying out the responsibilities of the office.

State Expenditures: The Governor's Office advises that the Appointment's Office oversees approximately 10,000 active applications each fiscal year for both Senate approved and non-approved positions for various boards and commissions throughout State government. The Governor's Office advises that it currently does not submit by the 40th day nominations for Senate-confirmable positions whose terms are scheduled to terminate between July 1 and December 31. As the bill requires the Governor's Office to come into compliance with existing constitutional and statutory requirements regarding the timing of nominations, the Governor's Office may incur some costs to do so, particularly to screen more applicants in order to submit their nominations by the 40th day of each legislative session.

The Department of Legislative Services (DLS) notes that any such fiscal impact is not due to the bill itself but to correcting longstanding practice – over many Administrations – in order to comply with constitutional provisions related to the timing of the submission of appointments. Nevertheless, the Governor's Office advises it needs five positions and a new tracking system to comply with the bill; DLS acknowledges that the Governor's Office may need at least two positions and the new tracking system at an initial cost of \$270,745 in fiscal 2025. To the extent that more staff may be needed based on experience under the bill, the Governor's Office can add additional positions through the operating budget process.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Governor's Office; Department of Legislative Services

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