

County Council's Proposed Legislation for Inclusion
In Frederick County's 2020
General Assembly Legislative Package

Proposed Amendment to Maryland State Law to Provide for Limited Special Elections to Fill Vacancies on the Frederick County Board of Education

Goal: A vacancy on the Board of Education should be filled by a vote of Frederick County's residents.

What is the Current Process?

Vacancies on the Board of Education are currently filled by an appointment-based process, whereby the County Executive appoints a replacement, and the County Council confirms the appointment. Appointments are a necessary component to fill a vacancy in this office; however, it should not be the ONLY component. The Board of Education is composed of elected officials with a tremendous amount of authority over both taxpayer funds and the education of our children. The voters should have a voice in this process.

What is being Proposed in this Amendment?

I am proposing a couple of things in this Charter amendment but, first and foremost, it is to enable the voters to choose a replacement for a vacancy on the Board of Education. I am NOT proposing that an election be held any time a vacancy occurs. Rather, I am proposing that we take advantage of the fact that during the mid-term of every elected Member's term, there is an existing election – either Presidential or Gubernatorial – which can be utilized to fill the vacancy. This has practical implications for when a vacancy will trigger an election. Specifically, the vacancy must occur early enough for candidates to register for the election. More specifically, the vacancy should occur no later than 30 days prior to the Primary registration deadline following the vacating Member's last election. For example, the next Presidential Primary will be 24 January 2020, so the deadline for a vacancy to trigger a special election in 2020 would be 25 December 2019.

Why not have an election whenever we need one? The simple answer is cost. A "one-off" election has been estimated to cost \$250,000-\$300,000. My strong preference is to avoid such a cost. What if we needed to do more than one during a four-year term? That starts to add up.

UPDATE - How Would the Special Election be Conducted?

In response to a question during our initial Council review, consultations were held with the Frederick County Election Director and the State Board of Elections. Under current State election law, during a non-partisan primary such as the one held for the Board of Education, twice as many candidates as there are open seats are nominated from the Primary Election. Thus, whenever a special election is needed to fill an unexpired term, two additional nominees will come from the Primary. No changes are required in this part of the law.

For the General Election, the State Board of Elections concurred with the idea that the winner of the special election is the next highest vote getter, after the regular BOE openings have been filled. For example, if there are four full-term openings on the ballot and one partial term, then the fifth highest vote-getter receives the partial term. Language has been added to the bill to reflect this information.

EXPLANATION:

BOLD CAPITALS INDICATE MATTER ADDED TO THE CHARTER.

[Brackets and ~~strikethrough~~] indicate matter deleted from the Charter.

Are Special Elections Authorized in Maryland Law?

Yes. Maryland law authorizes Counties to hold special elections conducted during regularly scheduled elections to fill vacancies for Board of Education. The State Education Article for Frederick County (Title 3, § 5B-01(d)(2), on the other hand, must be amended to provide this option here.

Do Other Charter Counties Authorize Special Elections?

Yes. As provided by Stuart Harvey (Frederick County Election Director, the term “special election” is actually a misnomer, but is used here to refer to the filling of a vacancy via the next scheduled election. The process for filling vacancies on the Boards of Education for Maryland’s charter counties varies greatly, including the following:

- Appointment Authority
 - Governor – Baltimore, Cecil, Harford (for appointed members only), Talbot
 - County Executive – Frederick, Howard, Prince Georges
 - County Council – Anne Arundel (effective 11/1/2020), Harford (for elected members only), Dorchester, Wicomico
 - Board of Education - Montgomery
- Nominating Commissions for Appointments – Anne Arundel, Baltimore, Wicomico
- Special Elections (next congressional election) – Howard, Talbot, Wicomico

As you may note, there is just as much precedent for vacancies to be filled by election, as there are for our current system of appointment by the County Executive.

There is Still a Role for Appointments

Even if you agree with this proposal, we will still need an appointment-based process. We will need to make an interim appointment prior to the outcome of a special election. That appointee would serve until the first Monday in December, at which time the winner of the election takes office. Also, if a vacancy occurs after the deadline, then we will need to appoint someone to fill the remainder of the vacating member’s term.

The Appointment Process Should be Improved

An appointee to an elected office should be treated differently than an appointee to a volunteer Board or Commission. An elected office carries far more authority and responsibility, and appointees deserve more scrutiny. The appointment process should be well documented and transparent. As provided in SB 334 last year, upon request, the County Executive must make available the names of candidates being considered for appointment. Why do this only upon request? These candidates to fill an elected official’s seat should simply be made public, along with their qualifications. Further, the County Council should hold a public interview with the appointee prior to confirmation, including the opportunity for public comment.

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Proposed Amendment Language

2018 Maryland Code; Education; Division II –Elementary and Secondary Education; Title 3 – Establishment of County Boards of Education; Subtitle 5B – Frederick County; 3-5B-01. Membership

(d) Vacancies. --

(1) The terms of voting members are staggered as provided in subsection (c) of this section.

(2) Subject to confirmation of the County Council, the County Executive shall appoint a qualified individual to fill a vacancy on the county board~~[for the remainder of the term and until a successor is elected and qualifies].~~—

(3) THE COUNTY EXECUTIVE SHALL MAKE PUBLIC THE NAMES OF CANDIDATES FOR THE APPOINTMENT.

(4) THE COUNTY COUNCIL SHALL HOLD A PUBLIC INTERVIEW OF THE APPOINTEE, INCLUDING PROVISION FOR PUBLIC COMMENT, PRIOR TO CONFIRMATION.

(5) IF THE VACANCY OCCURS NO LATER THAN 30 DAYS BEFORE THE CANDIDATE REGISTRATION DEADLINE FOR THE NEXT PRIMARY ELECTION FOLLOWING THE VACATING MEMBER’S ELECTION, THEN THE APPOINTEE SHALL ONLY SERVE UNTIL A NEW MEMBER SHALL BE ELECTED BY QUALIFIED VOTERS AT THE NEXT GENERAL ELECTION, AND IN THE MANNER PROVIDED BY LAW. THE NEW MEMBER ELECTED TO FILL THE VACANCY SHALL BE THE CANDIDATE WITH THE NEXT HIGHEST NUMBER OF VOTES, FOLLOWING THE ELECTION OF THE REGULARLY SCHEDULED FULL TERM MEMBERS.

(6) IF THE VACANCY OCCURS AFTER 30 DAYS BEFORE THE CANDIDATE REGISTRATION DEADLINE FOR THE NEXT PRIMARY ELECTION FOLLOWING THE VACATING MEMBER’S ELECTION, THEN THE APPOINTEE SHALL SERVE FOR THE REMAINDER OF THE VACATING MEMBER’S TERM.

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