


## MEMORANDUM

February 3, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Bill 50-16, Elections – Special Elections – Executive Vacancy

<b>Government Operations and Fiscal Policy Committee recommendation (3-0):</b> approve the Bill as introduced.
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Bill 50-16, Elections – Special Elections – Executive Vacancy, sponsored by Lead Sponsor Councilmember Leventhal, was introduced on December 13, 2016. A public hearing was held on January 24 and a Government Operations and Fiscal Policy Committee worksession was held on January 30.

Bill 50-16 would require a special election to fill a vacancy in the Office of the Executive under certain conditions and establish the procedures for conducting a special election.

### Background

In 2014, the Maryland General Assembly proposed an amendment to the Maryland Constitution to enable a county to enact a local law requiring a special election to fill a vacancy in the Office of County Executive. See 2014 Maryland Laws, Chapter 261 at ©7-12. The Maryland voters approved this amendment to the Maryland Constitution at the 2014 election. Pursuant to this authority, the Council proposed a Charter Amendment that would authorize the Council to enact a law requiring a special election to fill a vacancy in the Office of the Executive. The County voters approved this Charter Amendment at the 2016 election last November. See Question A at ©13-16.

Bill 50-16 would implement this authority by requiring a special election to fill a vacancy in the Office of the Executive that occurs before December 1 of the year before a year in which a quadrennial state election will be held. The procedures for the special election would be the same as a special election to fill a Council vacancy.

### Public Hearing

There were no speakers at the January 24 public hearing.

### January 30 GO Worksession

The Committee discussed the Bill, the cost to run a special election, and the will of the voters approving the Charter amendment last November authorizing the Council to enact this law. The Committee recommended (3-0) approval as introduced.

## Issues

### 1. What is the fiscal impact of the Bill?

OMB estimated the cost of a special election for County Executive to be between \$2.3 million and \$2.5 million. See ©17-22. These funds would only be spent if there was a vacancy in the Office of the Executive that occurs before December 1 of the year before a year in which a quadrennial state election will be held. OMB estimated a cost of \$2.3 million to operate a standard polling place election with a primary and a general election. The estimated cost for an election by mail is \$2.5 million.

### 2. Who would decide if a special election is done by polling place or mail?

In 2014, the Maryland General Assembly authorized the Council to decide if a special election to fill a vacancy on the Council or in the Office of the Executive should be conducted by polling places or by mail. See Md. Election Law §9-501(d) at ©10-11. The Council must decide this in the resolution establishing the dates for the special election.

### 3. Should the Bill be enacted?

A special election to fill a vacancy in the Office of the Executive gives the County voters a direct voice in the selection. While the right of the people to vote for an Executive cannot be minimized, it does come with a significant cost. It would likely require a supplemental appropriation due to the uncertainty of a vacancy. A stand-alone special election is estimated to cost between \$2.3 million and \$2.5 million. Candidates would also be eligible to seek public campaign financing for the election campaign. OMB did not estimate the cost for public campaign financing for one or more candidates. In addition, if a member of the Council is elected, a second special election to fill that seat might be required if it occurs early enough in the term.<sup>1</sup> Therefore, the OMB estimate of \$2.5 million for a special election is likely too low. However, if it is important enough to conduct a special election for a Council vacancy, it is difficult to argue that it is not important enough to conduct a special election for a vacancy in the Office of the Executive. It should also be noted that the County voters approved the Charter Amendment authorizing the Council to enact Bill 50-16 in the November 2016 general election. **Committee recommendation (3-0):** approve the Bill as introduced.

This packet contains:

Bill 50-16  
Legislative Request Report  
2014 Maryland Laws, Chapter 261  
2016 Local Ballot Questions  
Fiscal and Economic Impact statement

Circle #

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<sup>1</sup> A second special election to fill a Council vacancy if a sitting Councilmember is elected Executive would also be required if the Council appoints a sitting Councilmember to the vacant Office of Executive under current law during the first 2 years of the term.

Bill No. 50-16  
Concerning: Elections – Special  
Elections – Executive Vacancy  
Revised: 12/5/2016 Draft No. 1  
Introduced: December 13, 2016  
Expires: June 13, 2018  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Leventhal

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**AN ACT to:**

- (1) require a special election to fill a vacancy in the Office of the Executive under certain conditions;
- (2) establish the procedures for conducting a special election to fill a vacancy in the Office of the Executive; and
- (3) generally amend the law governing special elections for County elected officials.

By amending

Montgomery County Code  
Chapter 16, Elections  
Section 16-17

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1       **Sec. 1. Section 16-17 is amended as follows:**

2       **16-17. Council vacancy, Executive vacancy - election required.**

3       (a) In this Section, the following words have the meanings indicated:

4       [(1)] ["Board"] Board means the Montgomery County Board of  
5       Elections.

6       [(2)] ["Council vacancy"] Council vacancy means a vacancy on the  
7       County Council that must be filled by a special election under this  
8       Section.

9       Executive vacancy means a vacancy in the Office of the County  
10      Executive that must be filled by a special election under this Section.

11      Special election means the combination of a special primary election and  
12      a special general election conducted under this Section.

13      [(3)] ["State law"] State law means [Article 33] the Election Law  
14      Article of the Maryland Code, as amended from time to time, any  
15      successor provision, and any other relevant provision of state law.

16      [(4)] "Special election means the combination of a special primary  
17      election and a special general election conducted under this Section.]"

18      (b) (1) A vacancy on the Council or an Executive vacancy that occurs  
19      before December 1 of the year before a year in which a quadrennial  
20      state election will be held must be filled by a special election as  
21      provided in this Section.

22      (2) [The] For a Council vacancy, the special election must be  
23      conducted among the registered voters of the Council district  
24      represented by the previous member, or among the registered  
25      voters of the entire County when the previous member did not  
26      represent a Council district.

27      (3) For an Executive vacancy, the special election must be conducted  
28      among the registered voters of the entire County.

(4) The person elected to fill a Council vacancy or an Executive vacancy must meet the same qualifications and residence requirements, but need not be registered to vote in the same political party, as the previous [member] office holder.

[(4)] (5) The Councilmember or the Executive elected at a special election serves:

(A) from the date the person elected takes the oath of office after the Board (sitting as a Board of Canvassers under state law) certifies the result of the special election; and

(B) for the rest of the unexpired term of the previous [member] office holder.

(c) Except as otherwise provided in this Section, and to the extent applicable:

(1) The special election must be conducted in a manner consistent with provisions of state law that govern special elections to fill vacancies in the office of representative in Congress. The deadlines and time periods required under those provisions of state law apply to a special Council election or a special Executive election unless the Council, acting under subsection (d) or subsection (e), expressly modifies them.

(2) Except as provided in paragraph (1), the general provisions of state and County law that govern quadrennial elections for Councilmembers and the Executive apply to the special election conducted under this Section.

(d) (1) Within 30 days after a Council vacancy or an Executive vacancy occurs, the Council must adopt a resolution that:

(A) sets the dates of the special primary election and the special general election;

(B) sets the timeline for certification of a candidate for public campaign financing for the special primary election and the special general election; and

(C) takes any other action authorized by this Section or state law.

If a Councilmember or the Executive submits a resignation with a later effective date, the vacancy occurs when the Council receives the resignation.

(2) Notwithstanding subsection (c)(1), if the Council vacancy or the Executive vacancy occurs during the period beginning 120 days before the next regular or special primary or general election conducted in the County under state law and ending 40 days before that election, the special primary election provided for by this Section must be held on the same date as the other election. If a second regular or special primary or general election conducted in the County under state law is held more than 30 but less than 60 days after the special primary election referred to in the preceding sentence, the special general election held under this Section must be held on the same date as the second other election.

(3) Notwithstanding any other provision of law, a special primary or special general election under this Section must not be held within 30 days before or after any regular or special primary or general election conducted in the County under state law.

(e) If the Board advises the Council in writing that certain deadlines or other time periods provided by state law cannot be complied with in a special election held under this Section, or that compliance with those deadlines or time periods would be unreasonable or burdensome, the Council may

in the resolution set other deadlines or time periods appropriate for the special election held under this Section.

(f) Immediately after adopting a resolution under this Section, the Council must deliver the resolution to the Board.

(g) Within 7 calendar days after adopting the resolution, the Council must publish a notice that a vacancy has occurred in at least one newspaper of general circulation in the County. The notice must specify:

(1) the dates of the special primary election and the special general election; and

(2) the procedures under which a person may be nominated to fill the vacancy.

(h) (1) An individual who has filed a certificate of candidacy for the special election may, by 5 p.m. on the second business day after the deadline for filing certificates of candidacy, withdraw the certificate on a form prescribed by the Board.

(2) A candidate to whom a certificate of nomination is issued may, by 5 p.m. on the second business day after the certificate of nomination is issued, decline the nomination by filing a certificate of declination on a form prescribed by the Board.

(i) The Board must identify the costs it incurred in holding a special election under this Section and submit a request for a supplemental appropriation to the Director of the Office of Management and Budget within 60 days after the special general election.

*Approved:*

Roger Berliner, President, County Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 50-16

*Elections – Special Elections – Executive Vacancy*

<b>DESCRIPTION:</b>	Bill 50-16 would require a special election to fill a vacancy in the Office of Executive that occurs before December 1 of the year before a year in which a quadrennial state election will be held. The procedures for the special election would be the same as a special election to fill a Council vacancy.
<b>PROBLEM:</b>	The County voters approved a Charter Amendment to authorize a special election to fill a vacancy in the Office of Executive at the 2016 general election.
<b>GOALS AND OBJECTIVES:</b>	Provide for a special election to fill a vacancy in the Office of Executive that occurs before December 1 of the year before a year in which a quadrennial state election will be held.
<b>COORDINATION:</b>	County Attorney
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Robert H. Drummer, Senior Legislative Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	Applicable.
<b>PENALTIES:</b>	None



## Chapter 261

(House Bill 1415)

AN ACT concerning

### **Chief Executive Officer or County Executive – Special Election to Fill a Vacancy in Office**

~~MC 23-14~~

FOR the purpose of proposing an amendment to the Maryland Constitution to provide that a county charter may provide for the filling of a vacancy in the office of chief executive officer or county executive of a county by special election; proposing an amendment to the Maryland Constitution regarding a special election to fill certain vacancies in office; submitting an amendment to the Maryland Constitution to the qualified voters of the State for their adoption or rejection; altering provisions of law regarding the filling of a vacancy by special election to allow a county to have a special election to fill a vacancy in the office of chief executive officer or county executive; authorizing a special election to fill a vacancy in the office of chief executive officer or county executive of a charter county to be conducted by mail; providing for the effective dates of this Act; providing for the termination of certain provisions of this Act under certain circumstances; and generally relating to the filling of a vacancy in the office of chief executive officer or county executive by special election.

BY proposing an amendment to the Maryland Constitution  
Article XI–A – Local Legislation  
Section 3

BY proposing an amendment to the Maryland Constitution  
Article XVII – Quadrennial Elections  
Section 2

BY repealing and reenacting, without amendments,  
Article – Election Law  
Section 5–303 and 9–501(a), (b), and (c)  
Annotated Code of Maryland  
(2010 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,  
Article – Election Law  
Section 8–401 and 9–501(d)  
Annotated Code of Maryland  
(2010 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,

Article – Local Government

Section 10–205

Annotated Code of Maryland

(2013 Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, (Three-fifths of all the members elected to each of the two Houses concurring), That it be proposed that the Maryland Constitution read as follows:

**Article XI–A – Local Legislation**

3.

Every charter so formed shall provide for an elective legislative body in which shall be vested the law-making power of said City or County. Such legislative body in the City of Baltimore shall be known as the City Council of the City of Baltimore, and in any county shall be known as the County Council of the County. The chief executive officer **OR COUNTY EXECUTIVE**, if any such charter shall provide for the election of such executive officer **OR COUNTY EXECUTIVE**, or the presiding officer of said legislative body, if such charter shall not provide for the election of a chief executive officer **OR COUNTY EXECUTIVE**, shall be known in the City of Baltimore as Mayor of Baltimore, and in any County as the President or Chairman of the County Council of the County, and all references in the Constitution and laws of this State to the Mayor of Baltimore and City Council of the City of Baltimore or to the County Commissioners of the Counties, shall be construed to refer to the Mayor of Baltimore and City Council of the City of Baltimore and to the President or Chairman and County Council herein provided for whenever such construction would be reasonable. From and after the adoption of a charter by the City of Baltimore, or any County of this State, as hereinbefore provided, the Mayor of Baltimore and City Council of the City of Baltimore or the County Council of said County, subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws of said City or County including the power to repeal or amend local laws of said City or County enacted by the General Assembly, upon all matters covered by the express powers granted as above provided, and, as expressly authorized by statute, to provide for the filling of a vacancy in the County Council **OR IN THE CHIEF EXECUTIVE OFFICER OR COUNTY EXECUTIVE** by special election; provided that nothing herein contained shall be construed to authorize or empower the County Council of any County in this State to enact laws or regulations for any incorporated town, village, or municipality in said County, on any matter covered by the powers granted to said town, village, or municipality by the Act incorporating it, or any subsequent Act or Acts amendatory thereto. Provided, however, that the charters for the various Counties shall specify the number of days, not to exceed forty-five, which may but need not be consecutive, that the County Council of the Counties may sit in each year for the purpose of enacting legislation for such Counties, and all legislation shall be enacted at the times so

designated for that purpose in the charter, and the title or a summary of all laws and ordinances proposed shall be published once a week for two successive weeks prior to enactment followed by publication once after enactment in at least one newspaper of general circulation in the county, so that the taxpayers and citizens may have notice thereof. The validity of emergency legislation shall not be affected if enacted prior to the completion of advertising thereof. These provisions concerning publication shall not apply to Baltimore City. All such local laws enacted by the Mayor of Baltimore and City Council of the City of Baltimore or the Council of the Counties as hereinbefore provided, shall be subject to the same rules of interpretation as those now applicable to the Public Local Laws of this State, except that in case of any conflict between said local law and any Public General Law now or hereafter enacted the Public General Law shall control.

### Article XVII – Quadrennial Elections

2.

Except for a special election that may be authorized to fill a vacancy in a County Council **OR A VACANCY IN THE OFFICE OF CHIEF EXECUTIVE OFFICER OR COUNTY EXECUTIVE**, under Article XI–A, Section 3 of the Constitution, elections by qualified voters for State and county officers shall be held on the Tuesday next after the first Monday of November, in the year nineteen hundred and twenty–six, and on the same day in every fourth year thereafter.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

### Article – Election Law

5–303.

(a) Except as provided in subsections (b) and (c) of this section:

(1) in the year in which the Governor is elected, a certificate of candidacy shall be filed not later than 9 p.m. on the last Tuesday in February in the year in which the primary election will be held; and

(2) for any other regularly scheduled election, a certificate of candidacy shall be filed not later than 9 p.m. on the Wednesday that is 83 days before the day on which the primary election will be held.

(b) A certificate of candidacy for an office to be filled by a special election under this article shall be received and filed in the office of the appropriate board not later than 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.

(c) The certificate of candidacy for the election of a write-in candidate shall be filed by the earlier of:

(1) 7 days after a total expenditure of at least \$51 is made to promote the candidacy by a campaign finance entity of the candidate; or

(2) 5 p.m. on the Wednesday preceding the day of the election for which the certificate is filed.

8-401.

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

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

(2) to fill a vacancy in the county council **OR IN THE OFFICE OF CHIEF EXECUTIVE OFFICER OR COUNTY EXECUTIVE** if the charter of that county provides for special elections.

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

(2) Special elections to fill vacancies in a county council **OR IN THE OFFICE OF CHIEF EXECUTIVE OFFICER OR COUNTY EXECUTIVE** shall be held as provided in the county charter.

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

9-501.

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

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

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

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

(i) fill a vacancy in the OFFICES OF county council MEMBER, CHIEF EXECUTIVE OFFICER, OR COUNTY EXECUTIVE of a charter county if the charter of that county provides for special elections;

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

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

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

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

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

(2) A local special election shall be conducted by mail if the resolution of the county council or board of county commissioners establishing the date of the special election directs that the election be conducted by mail.

#### Article – Local Government

10-205.

A county may provide for the conduct of a special election to fill a vacancy in the county council **OR IN THE OFFICE OF CHIEF EXECUTIVE OFFICER OR COUNTY EXECUTIVE.**

SECTION 3. AND BE IT FURTHER ENACTED, That the General Assembly determines that the amendment to the Maryland Constitution proposed by Section 1 of this Act affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the Maryland Constitution concerning local approval of constitutional amendments do not apply.

SECTION 4. AND BE IT FURTHER ENACTED, That the amendment to the Maryland Constitution proposed by Section 1 of this Act shall be submitted to the qualified voters of the State at the next general election to be held in November 2014 for their adoption or rejection pursuant to Article XIV of the Maryland Constitution. At that general election, the vote on this proposed amendment to the Constitution shall be by ballot, and upon each ballot there shall be printed the words "For the Constitutional Amendment" and "Against the Constitutional Amendment," as now

provided by law. Immediately after the election, all returns shall be made to the Governor of the vote for and against the proposed amendment, as directed by Article XIV of the Maryland Constitution, and further proceedings had in accordance with Article XIV.

SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect on the taking effect of Section 1 of this Act. If Section 1 of this Act does not take effect, Section 2 of this Act shall be abrogated and of no further force and effect.

SECTION ~~5~~ 6. AND BE IT FURTHER ENACTED, That, except as provided in Sections 3 ~~and~~ 4, and 5 of this Act, this Act shall take effect June 1, 2014.

**Approved by the Governor, assigned a chapter number, enactment subject to constitutional referendum, May 5, 2014.**



Isiah Leggett  
*County Executive*

Marc P. Hansen  
*County Attorney*

OFFICE OF THE COUNTY ATTORNEY

August 9, 2016

Margaret Jurgensen, Election Director  
Board of Elections  
18753-210 North Frederick Avenue  
Gaithersburg, MD 20879

Re: Certification of Local Ballot Questions

Dear Ms. Jurgensen:

In accordance with the requirements of Section 7-103(c)(3) of the Election Law Article, Ann. Code of Md., I certify for inclusion on the 2016 General Election ballot the following Local Ballot questions.

Please note that Questions B and C must not appear on the ballot unless a petition containing the amendment set out in Question B qualifies for inclusion on the 2016 ballot.

**Question A**

**Charter amendment by act of County Council**

**County Executive Vacancy – Special Election**

Amend Section 205 of the County Charter to recognize that under State law the County Council may provide for a special election to fill a vacancy in the office of County Executive.

**FOR      AGAINST**

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Margaret Jurgensen, Election Director  
August 9, 2016  
Page 2

**Question B**

**Charter amendment by petition**

**Term Limits – County Council and County Executive**

Amend Sections 105 and 202 of the County Charter to: --limit the County Executive and members of the County Council to 3 consecutive terms in office;  
--provide that a County Executive and any member of the County Council who will have served 3 or more consecutive terms on December 3, 2018, cannot serve another successive term in the same office; and  
--provide that service of a term includes complete service of a full term and partial service of a full term.

**FOR      AGAINST**

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**Question C**

**Charter amendment by act of County Council**

**Term of Office – County Council and County Executive – Partial Service of a Full Term**

Amend Sections 105 and 202 of the County Charter to provide that partial service of a full term for either a Councilmember or the County Executive means service of more than two years of a term.

**FOR      AGAINST**

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A Spanish translation of the Local Ballot questions is attached.

Sincerely yours,

*Marc P. Hansen*

Marc P. Hansen  
County Attorney



Margaret Jurgensen, Election Director  
August 9, 2016  
Page 3

Attachment

cc: Nancy Floreen, President, Montgomery County Council  
Isiah Leggett, County Executive  
Timothy Firestine, Chief Administrative Officer  
Bonnie Kirkland, Assistant Chief Administrative Officer  
Robert Drummer, Sr. Legislative Attorney  
Josh Hamlin, Legislative Attorney  
Edward Lattner, Chief, Division of Government Operations

MPH:tjs

**Pregunta A**

**Reforma del Estatuto por acto del Consejo del Condado**

**Vacantes en la oficina del Ejecutivo del Condado – Edición Especial**

Reformar sección 205 del Estatuto del Condado para reconocer que bajo la ley estatal el Consejo del Condado podrá proveer una elección especial para llenar una vacante en la oficina del Ejecutivo del Condado.

**A favor**

**En contra**

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**Pregunta B**

**Reforma del Estatuto por petición**

**Límites de termino – El Consejo del Condado y el Ejecutivo del Condado**

Reformar secciones 105 y 202 del Estatuto del Condado para:

- limitar a el Ejecutivo del Condado y a los miembros del Consejo del Condado a 3 terminos consecutivos en la oficina.
- proveer que el Ejecutivo del Condado y cualquier miembro del Consejo del Condado que hayan servido 3 o más terminos consecutivos el 3 de Diciembre del 2018, no podran servir a otro termino sucesivo en la misma oficina; y
- proveer que el servicio de un termino incluye el servicio completo de un termino y el servicio parcial de un termino completo

**A favor**

**En contra**

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**Pregunta C**

**Reforma del Estatuto por acto del Consejo del Condado**

**Terminos en la oficina – El Consejo del Condado y el Ejecutivo del Condado – Servicio parcial de un termino completo.**

Reformar secciones 105 y 202 del Estatuto del Condado para proveer que un servicio parcial de un termino completo, ya sea de un miembro del Consejo o el Ejecutivo del Condado, significa servicio de más de dos años de un termino.

**A favor**

**En contra**

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ROCKVILLE, MARYLAND

MEMORANDUM

January 23, 2017

TO: Roger Berliner, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 50-16, Special Elections – Executive Vacancy

Please find attached the fiscal and economic impact statements for the above-referenced legislations.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Margaret Jurgensen, Director, Board of Elections  
David Platt, Department of Finance  
Dennis Hetman, Department of Finance  
Helen Vallone, Office of Management and Budget  
Naeem Mia, Office of Management and Budget

**Fiscal Impact Statement**  
**Bill 50-16, Special Elections – Executive Vacancy**

1. Legislative Summary

Requires a special election to fill a vacancy in the Office of the County Executive that occurs before December 1 of the year before a year in which a quadrennial state election will be held. The procedures for the special election would be the same as a special election to fill a Council vacancy.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

There would be no change in revenues. None of the expenditures for a special election are assumed in the recommended or approved budget, nor are any anticipated now. In the event of a vacancy that requires a special election, the costs of a primary and general election would be funded through a supplemental appropriation.

The approximate cost of both a primary and general special election would be \$2.3 million to \$2.5 million. How these costs are allocated would vary depending on whether, in its resolution establishing the date of the election, the Council opts to conduct the election using traditional polling places or by mail. Maryland Election Law permits a special election to be conducted in two different manners:

- The first is the traditional election model, with polling places open across the county. Voters who prefer to vote by mail may apply for an absentee ballot. No early voting for a special election is currently authorized by law.
- The second is a special election by mail. The Council has the option to select this option in its resolution establishing the date of the election. If the Council does so, all registered voters in Montgomery County would be mailed a ballot. In addition, the Board of Elections would be required to open vote centers in each of the five Council districts. This is a new option, and there are a few idiosyncrasies in the law that the Council may wish to work with the Montgomery County delegation to the legislature to clarify prior to selecting this model. For instance, absentee ballots would not be accepted at vote centers; all ballots cast at a vote center would be considered provisional ballots. In addition, the local board of election would be prohibited from releasing any results until midnight.

If the Council opts to conduct an election in the traditional manner, the bulk of the costs would be for Election Judge recruiting and training, payment of Election Judge stipends and the mailing of a sample ballot. There would also be higher costs for facility rentals and equipment delivery than for a special election by mail. Facility rental costs would be determined based on whether the facility was a government owned or private location.

If the Council opts to conduct the election by mail, the bulk of the costs would be for printing and postage of ballots and for temporary employees and overtime to support ballot processing and customer service. At the vote centers, there would also be some facility and equipment delivery costs and costs to support recruitment, training and payment of Election Judge personnel, but those costs would be significantly less than for traditional polling places.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The figures provided below assume that the timing of the vacancy would be such that the both elections would occur in a single fiscal year. If the timing of the vacancy was such that both elections occurred in the same fiscal year, the figure for Year 1 could be split between Year 1 and Year 2.

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
\$2.3 million-\$2.5 million	\$0	\$0	\$0	\$0	\$0

		<u>By Mail Election</u>	<u>Polling Place Election</u>
<b>Delivery/Pickup of Equipment</b>	\$	5,820	\$ 265,392
<b>Overtime</b>	\$	75,000	\$ 75,000
<b>Ballot Printing and Postage</b>	\$	1,983,479	\$ 574,785
Outgoing ballot mailing	\$	1,746,493	\$ 198,875
Return postage	\$	236,986	\$ 5,910
Sample Ballot		0	\$ 370,000
<b>Temporary Employees</b>	\$	204,933	\$ 353,760
Recruiting and Training	\$	94,453	\$ 261,120
Voting Equipment Personnel	\$	20,928	\$ 63,840
Call Center Customer Service	\$	25,136	\$ 28,800
Ballot Processing	\$	64,416	\$ -
<b>Election Judges</b>	\$	247,916	\$ 1,017,840
<b>Polling Place Supplies</b>		0	\$ 4,899
<b>Documents and Misc. Services</b>	\$	5,000	\$ 5,000
<b>Total</b>	\$	2,522,148	\$ 2,296,676

**Delivery/Pickup of Equipment.** All voting equipment is leased through the state and required to be delivered and picked up using a state vendor.

**Overtime.** Includes overtime for permanent and temporary employees. Comp time for permanent employees working side-by-side with temporary hires is limited as temporary employees are ineligible for comp time and can only be compensated for excess hours using overtime.

**Printing and Postage.** These costs are combined under a state contract for ballot printing and postage at a fixed cost of \$1.30 per ballot. For a special election by mail, the cost of return postage assumes 36% turnout. For a by mail election, no sample ballot would be mailed as all necessary voting information would be included in the instructions with the ballot mailing.

**Election Judges.** For an election by mail, this figure assumes that only county facilities would be used to minimize costs and that each voting center would be open for six days preceding the election. In addition, this figure includes the costs for stipends for Board members and Election Judges to conduct the official canvass of absentee and provisional ballots. For a polling place election, this figure assumes two Chief Judges and eight election operations judges per site, plus 32 countywide roamers.

**Recruiting and Training.** For a special election by mail, this figure assumes two temporary recruiting employees for 14 weeks, one temporary clerical support employee for 12 weeks, eight temporary trainers for 8 weeks and eight temporary trainers for an additional two weeks to conduct the post-election audit/performance review of Election Judges. For a polling place election, this assumes four temporary recruiting employees for 16 weeks and sixteen temporary trainers for 15 weeks.

**Voting Equipment Personnel.** For a special election by mail, this figure assumes two temporary employees for eight weeks to assist in preparing the poll books and voting equipment for voting, and two temporary employees for four weeks to support the tabulation of votes and the post-election audit. For a polling place election, this figure assumes five temporary employees for sixteen weeks.

**Call Center.** For a special election by mail, this assumes four temporary employees including two bilingual employees to open the Board of Elections Call Center. Duties include answering telephones, answering voter questions and performing other tasks associated with providing direct customer service to voters for eight weeks, including the necessary time for employee training. For a polling place election, this assumes two temporary employees for ten weeks.

**Ballot Processing.** This figure includes \$42,944 for eight temporary employees for handling of ballots received by mail. It also includes \$21,472 for an additional four temporary employees to manage requests for a replacement ballot.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable. It is not anticipated that a special election would require county IT resources not otherwise provided in the department budget.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

This fiscal impact statement assumes that there will be no early voting for a special election using traditional polling places. It also assumes that vote centers will be open for the dates and times provided in state law, although the Council has some discretion to alter the dates and hours that vote centers will be open. This fiscal impact statement also assumes that there will be no increases in labor costs, printing, postage or delivery rates, nor any additional costs billed by the State Board of Elections for system upgrades or support for a special election.

In addition, the Council and/or the State Board of Elections may provide future guidance that could significantly affect expenditures. For example, the Board of Elections has not previously conducted an election by mail and the County Council and/or the State Board of Elections may opt to provide guidance on such matters as whether the Board should attempt to mail a ballot to the last known address of a voter whose previous mail has been returned undeliverable.

7. An estimate of the staff time needed to implement the bill.

The conduct of a special election would consume existing staff resources for 130 days from the point of filing of candidates through the two elections, the post-election procedures that are conducted prior to certifying the results (the "canvass"), certification of the election results, and payment to election judges. Estimated completion would be seven weeks after the general election for certification and payment to Election Judges who served in the election.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

The department would absorb the additional duties associated with a special election through a combination of overtime and temporary staffing as identified in this fiscal

impact statement. Additional staffing would be limited to temporary personnel utilizing agency and county temporary employees.

9. An estimate of costs when an additional appropriation is needed.

A supplemental appropriation of \$2.3 to \$2.5 million may be needed if a special election is needed.

10. A description of any variable that could affect revenue and cost estimates.

See the response to question 6, above. The costs of return postage could vary significantly depending on turnout. In addition, the costs of an election could be affected by a recount, challenge, or contest of the election result.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

See the responses to questions 2 and 6, above.

12. If a bill is likely to have no fiscal impact, why that is the case.

There would only be a fiscal impact of this legislation if a vacancy occurs before December 1 of the year before a year in which a quadrennial state election will be held.

13. Other fiscal impacts or comments.

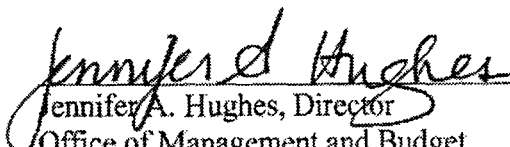
Not applicable.

14. The following contributed to and concurred with this analysis:

Margaret Jurgensen, Board of Elections

Alysoun N. McLaughlin, Board of Elections

Helen P. Vallone, Office of Management and Budget

  
Jennifer A. Hughes, Director  
Office of Management and Budget

1/20/17  
Date



**Economic Impact Statement**  
**Bill 50-16 Elections – Special Elections – Executive Vacancy**

**Background:**

Bill 50-16 would require a special election to fill a vacancy in the Office of the Executive under certain conditions and establish the procedures for conducting a special election. In 2014, the Maryland General Assembly proposed an amendment to the Maryland Constitution to enable a county to enact a local law requiring a special election to fill a vacancy in the Office of County Executive. The Maryland voters approved this amendment to the Maryland Constitution at the 2014 election. Pursuant to this authority, the Council proposed a Charter Amendment that would authorize the Council to enact a law requiring a special election to fill a vacancy in the Office of the Executive. The County voters approved this Charter Amendment at the 2016 election in November. Bill 50-16 would implement this authority by requiring a special election to fill a vacancy in the Office of the Executive that occurs before December 1 of the year before a year in which a quadrennial state election will be held.

**1. The sources of information, assumptions, and methodologies used.**

- 2014 Laws of Maryland Ch. 261 Article XVII – Quadrennial Elections

This legislation does not have an economic impact since it only authorizes a special election to fill a vacancy in the Office of the Executive under certain conditions. The procedures for the special election would be the same as a special election to fill a Council vacancy. While there will be a cost to the County in holding the special election as noted in the fiscal impact statement for the bill, the legislation will not have a positive or negative effect on employment, spending, savings, investment, incomes, or property values.

**2. A description of any variable that could affect the economic impact estimates.**

This legislation does not have an economic impact.

**3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**


Please see the answer to question 1.

**4. If a Bill is likely to have no economic impact, why is that the case?**

Please see the answer to question 1.

**5. The following contributed to or concurred with this analysis:**

David Platt, Dennis Hetman, and Robert Hagedoorn, Finance.

  
\_\_\_\_\_  
Alexandre A. Espinosa, Director  
Department of Finance

1/13/2017  
Date