

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 171 (Senator Forehand)
Education, Health, and Environmental Affairs

Election Law - Special Elections - Voting by Mail

This bill allows for voting by mail to be utilized in a special election to fill a vacancy in the office of representative in Congress and specified local special elections that are not held concurrently with a regularly scheduled primary or general election. The bill does not apply to special elections for the Montgomery County Council, which are already covered by a recently enacted voting by mail law. The Governor, in the case of a special election to fill a congressional vacancy, and a county council or board of county commissioners, in the case of a local special election, are given discretion to direct that the election be conducted by mail. The bill establishes a process and requirements applicable to a special election conducted by mail, including a requirement that at least one in-person voting center be established for the use of any eligible voter who chooses to cast a ballot in person.

The bill takes effect June 1, 2013.

Fiscal Summary

State Effect: State expenditures are expected to decrease in most, if not all, cases in which special elections are conducted by mail rather than at polling places. State costs for paper ballots (shared with the counties) would increase, but are expected to be outweighed in most, if not all, cases by savings on voting system services necessary to conduct an election at polling places.

Local Effect: Local government expenditures are also expected to decrease in most, if not all, cases in which special elections are conducted by mail rather than at polling places. Prince George's County, for example, may experience savings in the range of \$90,000 for a county council special election.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Utilization of Voting by Mail

The bill allows for voting by mail to be utilized in a special election that is not held concurrently with a regularly scheduled primary or general election. A special election to fill a vacancy in the office of representative in Congress must be conducted by mail if the Governor's proclamation declaring a special election directs that the election be conducted by mail. A local special election must 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. Various types of local special elections that the bill applies to are specified. The bill, however, does not apply to a special election for the Montgomery County Council.

The State Board of Elections (SBE) may adopt regulations as necessary to implement the bill. Except as otherwise provided in the bill, State election laws relating to absentee voting apply to voting by mail; local laws relating to the conduct of a special election apply to a special election utilizing voting by mail; and State election laws relating to the conduct of elections apply to a special election utilizing voting by mail unless a law specifically relevant to a special election applies.

Vote-by-mail Process

A local board of elections must mail a vote-by-mail ballot to each registered voter who is eligible to vote in a special election, unless a voter has requested that the ballot be transmitted by other means. Voters do not need to submit an application to receive a ballot. A vote-by-mail ballot must be sent to each eligible voter at least 14 days before the special election.

A ballot generally must be sent to the voter's address on file in the statewide voter registration list. However, a registered voter may request to receive a ballot at another address, if the voter is temporarily absent from the address on file or has changed residence, up until the Tuesday preceding the day of a special election. A local board must issue a replacement vote-by-mail ballot to a voter if the local board has reasonable grounds to believe that a vote-by-mail ballot previously issued to the voter has been lost, destroyed, spoiled, or not received.

A voter may return a vote-by-mail ballot to a local board of elections by mail, in person during regular office hours, or through a duly authorized agent in accordance with specified requirements applicable to use of an agent to return an absentee ballot. A vote-by-mail ballot is considered timely and may be counted if (1) the ballot is returned in person to the office of a local board of elections no later than 8 p.m. on the day of a special election or (2) is received by mail by a local board of elections no later than 10 a.m. on the second Friday after a special election and was mailed on or before election day.

Requirement of At Least One In-person Voting Center

Each local board must establish at least one voting center for the use of any eligible voter who chooses to cast a ballot in person in a special election utilizing voting by mail. A voting center must (1) be located at a local board of elections office or another location within the constituency where the special election is being held; (2) provide access to a voting system that is accessible to voters with disabilities in accordance with specified federal law; (3) provide for provisional voting; (4) satisfy State law requirements applicable to polling places; and (5) be open for voting each day beginning six days before the day of a special election through the day of a special election during the hours between 10 a.m. and 8 p.m. Monday through Saturday and 12 noon and 6 p.m. on Sunday. Except as otherwise provided in the bill, any provision of the Election Law Article that applies to voting at a polling place on election day applies to voting at a voting center.

Current Law: With the exception of special elections for the Montgomery County Council, State law provides for elections, whether regular or special elections, to be conducted through both in-person and absentee voting. (Election Law Article, §§ 9-301, *et seq.*, 10-301, *et seq.*) Pursuant to Chapter 677 of 2012 (HB 725), special elections for the Montgomery County Council may be conducted by mail. The law applicable to Montgomery County Council elections is very similar to this bill, but with certain differences. The requirements applicable to in-person voting centers, for example, are different, and this bill does not have a requirement for the local board of elections to pay for return postage for the ballots which the law applicable to Montgomery County Council special elections does. (Election Law Article, §§9-501, *et seq.*)

Background: Oregon and Washington conduct all elections by mail and according to the National Conference of State Legislatures, 17 additional states allow certain elections to be held by mail: Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, and North Dakota.

State Fiscal Effect: The fiscal impact on the State of conducting a special election by mail instead of in-person at polling places will be specific to each special election and will vary depending on the jurisdiction(s) it is being held in. SBE generally shares voting system-related costs, such as voting equipment delivery, voting system/machine technicians, and ballot printing costs, with the local boards of elections (pursuant to a requirement under Chapter 564 of 2001, HB 1457), though some local boards obtain certain services such as voting system/machine technicians independently and bear the whole cost of those services. It appears that in most, if not all, cases SBE's costs would decrease, with increases in its share of paper ballot costs being outweighed by a reduction in other voting system services costs associated with conducting an election at polling places (*e.g.*, voting equipment delivery, technicians). In Prince George's County, for example, when comparing costs of a county council special election held in 2011 with potential costs for a vote-by-mail special election, under one set of assumptions for those potential costs, SBE saves approximately \$7,000 if a vote-by-mail special election is conducted.

If the State acquires and implements an optical scan, paper ballot-based voting system (in accordance with Chapters 547 and 548 of 2007 (SB 392/HB 18) and Chapter 428 of 2009, HB 893) to replace the current touchscreen voting system, the cost difference between conducting a special election at polling places and by mail would be affected. In that case, a significant number of paper ballots would need to be printed for a special election conducted at polling places, which would lessen, if not eliminate, the increase in paper ballot costs to conduct a vote-by-mail election instead of an election at polling places.

Local Fiscal Effect: The fiscal impact of conducting a special election by mail instead of largely in-person at polling places will be specific to each special election and will vary by jurisdiction, as all 24 counties do not incur the exact same types and magnitude of costs to conduct elections. County expenditures, however, are expected to decrease in most, if not all, cases, with savings on costs associated with conducting an election at polling places (election judges, voting system services, etc.) outweighing the costs of mailing ballots to each voter eligible to vote in a special election and processing the returned ballots.

The cost of postage, including whether the return postage would be paid for by the county, could be a significant factor in a given jurisdiction in determining whether there is savings in conducting a special election by mail instead of at polling places and the degree of savings. Based on costs associated with automated ballot delivery services (printing, assembling, and mailing of absentee ballots by a contractor) SBE has recently contracted for, it appears that the postage rates for sending out the ballots for a special election conducted by mail would be relatively low. Even with a local government paying for return postage (which is expected to be at higher rates, though only for the

ballots returned), it appears savings should be realized in most cases, in comparison to conducting a special election at polling places.

In Prince George's County, for example, when comparing costs of a county council special election held in 2011 with potential costs for a vote-by-mail special election, under one set of assumptions for those potential costs, the county saves approximately \$90,000 conducting the vote-by-mail special election. That assumes that only one voting center is established for the required six days and that return postage is not paid for. If return postage was paid for, the savings would be reduced depending on the postage rate and amount of ballots returned, but it appears there would nonetheless be an overall savings.

As mentioned above with respect to the State fiscal effect, the type of voting system used to conduct voting at polling places will also affect the cost difference between conducting a special election at polling places and by mail.

Additional Information

Prior Introductions: HB 225 of 2012 received a hearing in the House Ways and Means Committee, but no further action was taken. SB 258 of 2010 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Cross File: HB 196 (Delegate Cardin, *et al.*) - Ways and Means.

Information Source(s): State Board of Elections; Anne Arundel, Baltimore, Dorchester, Garrett, and Prince George's counties; National Conference of State Legislatures; Department of Legislative Services

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ncs/hlb

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510