

**MEMORANDUM**

January 20, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

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

Bill 50-16, Elections – Special Elections – Executive Vacancy, sponsored by Lead Sponsor Councilmember Leventhal, was introduced on December 13, 2016. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for January 30 at 10:30 a.m.

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.

This packet contains:	<u>Circle #</u>
Bill 50-16	1
Legislative Request Report	6
2014 Maryland Laws, Chapter 261	7
2016 Local Ballot Questions	13

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

---

Lead Sponsor: Councilmember Leventhal

---

**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

**Boldface**

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

\* \* \*

*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

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

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

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

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

[(1)] [“Board”] Board means the Montgomery County Board of Elections.

[(2)] [“Council vacancy”] Council vacancy means a vacancy on the County Council that must be filled by a special election under this Section.

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

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

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

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

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

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

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

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

33 [(4)] (5) The Councilmember or the Executive elected at a special  
 34 election serves:

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

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

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

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

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

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

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

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

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

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

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

75 (3) Notwithstanding any other provision of law, a special primary or  
76 special general election under this Section must not be held within  
77 30 days before or after any regular or special primary or general  
78 election conducted in the County under state law.

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

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

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

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

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

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

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

98 (2) A candidate to whom a certificate of nomination is issued may, by  
 99 5 p.m. on the second business day after the certificate of  
 100 nomination is issued, decline the nomination by filing a certificate  
 101 of declination on a form prescribed by the Board.

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

106 *Approved:*

107 \_\_\_\_\_  
 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**

---

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**

---

**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**

---

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**

---

**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**

---

**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**

---