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Subject: [EXTERNAL] Online Form Submittal: Charter Review Committee Submission Form

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Charter Review Committee Submission Form

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Comments, Questions or Concerns	HOW AN EXECUTIVE VACANCY IS FILLED ELSEWHERE – AND SHOULD BE FILLED HERE

As mentioned at the Committee's June 3 meeting, following Mr. Culver's death last year I reviewed the charters in each Maryland county regarding the method for filling a vacancy in the county executive position. I've put this information in a charter comparison summary, which is being sent separately, by email.

Among the charter counties, there is very substantial variance – in some, such as Baltimore, Cecil and Howard, it is a simple process that can be done by the county council very quickly (potentially immediately upon a vacancy) and in others, including Wicomico, it is more complex and potentially time-consuming.

Last year, both Mr. Wilber and I concluded that a specified time limit to make an appointment (such as in the Wicomico Charter) is not mandatory under Maryland law. Another question involved appointment of a member of the Council, which appears to be prohibited under Maryland law if made by the Council voting to appoint one of its members. However, if

the charter provides that a Council member – without a vote – fills the vacancy, that, arguably, is lawful.

In some counties, the charter is silent as to who acts as the executive until the vacancy is filled. In most counties, the new executive serves the entire balance of the term (no interim election).

RECOMMENDATION

The notion that there should be a public hearing and debate by the Council to decide who to appoint provides little or no benefit and almost certainly may and probably, if not inevitably will result in acrimony – as happened here last year and several years ago in Anne Arundel County when it's elected executive was convicted of misconduct in office (served time in jail). In each instance, a member of the General Assembly applied but was not appointed, and his supporters went bonkers, aggressively attacking certain members of the Council in the media, etc.

A simple process, such as that in those other counties named above (except Anne Arundel), is much better and potentially much faster. Regardless of the general procedure, the requirement to select from persons submitted by a party's central committee should be avoided. A central committee can submit recommendations if its members so desires, but that should not limit the field.

Last summer I contacted the Attorney General's office, which advised that the Open Meetings Compliance Board has ruled on several occasions that the Council or other body is not required to conduct deliberations in open session when it is appointing someone that it selects, rather than confirming someone who has been appointed or nominated subject to the Council's approval. There should be no required public hearing, etc., both to save time and avoid untoward acrimony, which seems to be inherent when there is a public hearing and deliberation process.

And it is prudent – in order to encourage applicants – for the appointment to be for the entire remaining balance of the term, not just until a special or interim election is held, and the appointee should not be required to be full-time during the appointment period.

CHARTER COMPARISON SUMMARY

TOPIC: County Executive – Procedure for Filling Vacancy

The following language is from the charters with light editing to shorten by removing extraneous text. Also, standard provisions – that someone must meet the general (age, residency, etc.) requirements and can serve until his/her successor is elected and qualified – are omitted below.

<u>County</u>	<u>Section</u>	<u>Details</u>
Anne Arundel	402(b)	If a vacancy occurs during the first 12 months of a term, a new County Executive shall be nominated and elected in the next statewide election (primary and general) -- in the interim, the vacancy shall be temporarily filled by resolution by a majority vote of the County Council, within 30 days after the vacancy occurs.
	402(c)	If a vacancy occurs after the first 12 months of a term, the vacancy shall be permanently filled by resolution by a majority vote of the County Council, within 30 days after the vacancy occurs.
	402(e)	If the former County Executive was a member of a political party, the new County Executive, either temporarily or permanently, shall be registered in the same political party as the former County Executive for the 12-month period immediately prior to his election by the County Council.
	402(f)	The County Council shall hold public interviews of candidates to fill the vacancy, whether temporary or permanent, and shall elect the new County Executive from among those persons interviewed.
Baltimore – City	Art. IV, §2(b)	The President of the City Council shall be Mayor for the remainder of the term for which the Mayor was elected. [the President of the City Council is a separate elected office and not appointed by the Council.]
Baltimore – County	402(b)	Filled by the affirmative vote of a majority of the total number of county council members established by this Charter. The person so elected shall belong to the same political party as his predecessor (unless his predecessor was not a member of a political party).
Cecil	407	A majority of the council members shall appoint, within 30 days, a person to fill the vacancy. An appointee, when succeeding a party member, shall be a member of the same political party as the person elected to such office and shall be a nominee of the county central committee of that party.
Dorchester – [no county executive]		

- Frederick
- 408(a) A majority of the council members shall appoint, within forty-five days, a person to fill the vacancy and to serve a term pursuant to sub section (f) or (g) of this section, as applicable.
- 408(b) If the vacating County Executive was last elected as a member of a political party, the appointee shall be selected from a qualified list of three persons submitted to the Council by the central committee of the same party. The central committee must provide the list of three persons within 30 days of the vacancy date. If no list is provided within 30 days, or if the vacating County Executive was not a member of a political party when last elected, the Council shall appoint a person it deems best qualified to hold office.
- 408(c) If the Council has not made an appointment within the forty-five-day period provided in subsection (a) of this section, the Council shall appoint within fifteen days thereafter, the Chief Administrative Officer.
- 408(d) Any person appointed to fill a vacancy pursuant to this section, except the Chief Administrative Officer, shall meet the qualifications provided in Section 405 of this Charter [residency, etc.]
- 408(e) All persons considered by the Council for appointment under either subsection (b) or (c) of this section, as applicable, shall be presented to the public, including their names and qualifications. In addition, the nominees shall be interviewed in public by the Council, including the opportunity for public comment.
- 408(f) If the vacancy occurs no later than 30 days prior to the candidate filing deadline for the presidential primary election, a new County Executive shall be nominated and elected by qualified voters [in that election]. In the interim, the vacancy shall be temporarily filled pursuant to subsection (b) or (c) of this section, as applicable.
- 408(g) If the vacancy occurs after 30 days prior to the candidate filing deadline for the presidential primary election, the new Executive shall be appointed pursuant to subsection (b) or (c) of this section, as applicable, and serve the remainder of the vacating Executive's term.
- Harford
- 307(a) A majority of the County Council shall, within thirty calendar days thereafter, appoint a person to fill the vacancy from among those who apply to the County Council for the position. If an appointee is to succeed a member of a political party, that individual shall be a member of the party to which the former County Executive belonged at the time of his or her election.
- 307(b) If a vacancy filled by an appointment under Subsection (a) of this section occurred more than ninety calendar days before the next Congressional primary election, an election shall be held simultaneous to the Congressional election to elect a new County Executive to fulfill the remaining term.

Howard	302(f)	The Chief Administrative Officer shall serve as acting Executive until a new Executive shall be appointed. The office of County Executive shall be filled by resolution within thirty days by the affirmative vote of a majority of the members of the Council. The person so elected by the Council shall belong to the same political party as his or her predecessor at the time of the Executive's most recent election (unless his or her predecessor was not a member of a political party).
Montgomery	205	Unless the Council has provided by law for filling a vacancy by special election, the following process for filling a vacancy shall apply. When a vacancy has occurred, the Council, by a vote of not less than five members, shall appoint a successor to fill the vacancy within forty-five days of the vacancy. An appointee to fill a vacancy, when succeeding a party member, shall be a member of the same political party as the person elected to such office at the time of election. If the Council has not made an appointment within forty-five days, the Council shall appoint within fifteen days thereafter the nominee of the County Central Committee of the political party, if any, of the person elected to such office. The Chief Administrative Officer shall act as County Executive and perform all the duties of that office until such time as the vacancy has been filled.
Prince George's	407	The Chief Administrative Officer shall become the Acting County Executive until a County Executive is chosen by the methods established in this Section of the Charter. In the event of a vacancy occurring during the last two years of the term, the Council shall select from among its members, by majority vote, a successor for the office for the balance of the unexpired term. If this selection by the Council is not made within fourteen (14) calendar days after the vacancy occurs, the Chairman of the Council shall succeed to the Office for the balance of the unexpired term. The Council shall provide by law for the conduct of a special election to fill a vacancy that occurs during the first two years of a term and for the appointment, powers and duties of an Acting County Executive pending the outcome of such special election.
Talbot – [no county executive]		
Wicomico	407.A.	The Director of Administration shall serve as Acting County Executive until a new County Executive is appointed, and shall have the same rights, duties, powers and obligations as an elected incumbent in said office.
	407.B.	If a vacancy occurs during the first 12 months of a term, a new County Executive shall be nominated and elected by the qualified voters of the County at the same time as members of the House of Representatives of the Congress are nominated and elected. In the interim until a new County Executive is elected, the vacancy shall be temporarily

filled by resolution by a majority vote of the members of the County Council within 45 days after the vacancy occurs.

407.C. If a vacancy occurs after the first 12 months of a term, the vacancy shall be permanently filled by resolution by a majority vote of the members of the County Council, within 45 days after the vacancy occurs.

407.D. If the former County Executive was a member of a political party, the new County Executive being appointed, either temporarily or permanently, shall belong to the same political party as his or her predecessor at the time of the executive's most recent election and shall possess the same qualifications for office as provided in Section 405 of this Charter [regarding residence, age, etc.].
