

Department of Legislative Services  
Maryland General Assembly  
2013 Session

**FISCAL AND POLICY NOTE**

Senate Bill 172 (Chair, Anne Arundel County Senators)  
Judicial Proceedings

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**Circuit Court for Anne Arundel County - Judges Sitting as Orphans' Court**

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This proposed constitutional amendment repeals the requirement that voters in Anne Arundel County elect three orphans' court judges and instead requires the judges of the circuit court for the county to sit as the orphans' court.

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**Fiscal Summary**

**State Effect:** If the constitutional amendment is adopted, general fund expenditures for the Judiciary increase significantly for costs associated with the additional workload to be performed by the circuit courts. Under a conservative set of assumptions, general fund expenditures increase by \$58,200 in FY 2015, which accounts for a January 1, 2015 effective date and by \$116,500 annually thereafter.

**Local Effect:** If the constitutional amendment is adopted, Anne Arundel County expenditures decrease by as much as \$43,750 in FY 2015 and by \$87,500 annually beginning in FY 2016. These savings are partially offset by costs associated with a new circuit court judgeship if the Judiciary elects to request a new circuit court judge to accommodate the additional workload that is required under the bill's provisions.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Under the Maryland Constitution, each county elects three judges to the orphans' court of their respective jurisdictions, with the exception of Montgomery and Harford counties. In these counties, the judges of the circuit court sit as the orphans' court and have all the power, authority, and jurisdiction of the orphans' court.

An orphans' court judge must be a citizen of the State and resident, for the preceding 12 months, in the city or county in which they may be elected. In Baltimore City and in

Baltimore and Prince George's counties, the judges must also be members in good standing of the Maryland Bar and admitted to practice law in the State.

**Background:** An orphans' court hears all contested matters regarding a decedent's estate, including validity of wills and legal questions involving transfers of property. The court also (1) supervises estates that are probated judicially; (2) approves accounts, awards of personal representatives' commissions, and attorney's fees in all estates; and (3) has concurrent jurisdiction with the circuit courts in the guardianship of minors and their property.

At the suggestion of the Legislative Policy Committee, in January 1979, the Chief Judge of the Court of Appeals began an annual procedure of formally certifying to the General Assembly the need for additional judges in the State. The annual certification is prepared based upon a statistical analysis of the workload of the courts and the comments of the circuit administrative judges and the Chief Judge of the District Court. Since fiscal 2002, the Judiciary has implemented a weighted caseload methodology to assist in determining judgeship needs. This methodology weights cases to account for the varying degrees of complexity associated with particular case types and the amount of judicial time required to process the workload. Chapter 269 of 2009 (SB 497) last authorized one additional circuit court judge in several counties, including Anne Arundel. According to the certification for fiscal 2014, Anne Arundel County still needs two additional judges, and has the adequate space available for at least one additional judge.

The 2012 *Joint Chairmen's Report* directed the Judiciary to develop a multi-year plan to request new judgeships so that workloads can be addressed gradually without a significant impact on State expenditures. Although the judgeship development plan will be adjusted as necessary to account for changing priorities, at present there is no definitive plan to request an additional circuit court judge in Anne Arundel County for the next several fiscal years. As with other jurisdictions, Anne Arundel County relies on the use of retired judges to supplement current judicial resources. In fiscal 2012, retired judges provided the equivalent of 341 judge days.

**State Fiscal Effect:** If adopted, the amendment would require circuit court judges to assume the workload presently being done by the orphans' court. The Judiciary advises that they are unable to reliably estimate the extent to which judicial resources will be needed to manage the workload of the orphans' court, but does indicate that current judicial resources will not be adequate. Information regarding case statistics and workload trends was not available from either the Judiciary or Anne Arundel County. The Department of Legislative Services concurs with the Judiciary that the workload of the orphans' court cannot be absorbed with the existing resources of the Judiciary.

The circuit court may elect to use retired judges to a greater extent to absorb the workload of the orphans' court. The three judges of the orphans' court are currently required to work two business days per week. If the circuit court were to attempt to manage the caseload by scheduling two judges to sit as the orphans' court two days per week, it is assumed that retired judges would be needed to cover the caseloads. Accordingly, expenditures would increase by \$58,200 in fiscal 2015, which assumes a January 1, 2015 start date, and by approximately \$116,500 annually thereafter (based on a \$571 per diem). On the other hand, if the workload is such that an additional judge is needed, annual expenditures for the Judiciary increase by approximately \$200,000 in fiscal 2015, which assumes a January 1, 2015 start date, and by over \$400,000 annually. These costs would include salaries and fringe benefits for a judge, a law clerk, and a court clerk.

State costs of printing absentee and provisional ballots may increase to the extent inclusion of the proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). Any increase in costs, however, is expected to be relatively minimal, and it is assumed that the potential for such increased costs will have been anticipated in the State Board of Elections' budget. Pursuant to Chapter 564 of 2001 (HB 1457), the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

**Local Fiscal Effect:** If the circuit court judges assume responsibility for the orphans' court workload, Anne Arundel County will no longer be responsible for salaries for the orphans' court judges, which total \$87,500 annually. Accordingly, Anne Arundel County expenditures decrease by approximately \$43,750 in fiscal 2015 (which assumes a January 1, 2015 start date) and by \$87,500 annually thereafter. This expenditure reduction will be mitigated to the extent that the Judiciary elects to create a new judgeship for the Anne Arundel County circuit court as a result of the increase in workload. Counties are responsible for providing secretarial staff, supplies, and equipment for circuit court judges, as well as capital and operating expenses for courtrooms and office facilities. Anne Arundel County estimates that salary and fringe benefit costs for a judicial secretary are \$59,500 annually.

Local boards of elections' printing and mailing costs may increase to include information on the proposed constitutional amendment with specimen ballots mailed to voters prior to the next general election and to include the proposed amendment on absentee and provisional ballots. It is assumed, however, that the potential for such increased costs will have been anticipated in local boards of elections' budgets.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 163 (Anne Arundel County Delegation) – Judiciary.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Anne Arundel County, Department of Legislative Services

**Fiscal Note History:** First Reader - January 25, 2013  
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Analysis by: Jennifer K. Botts

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