

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 294 (Senator Zirkin)
Judicial Proceedings

Election of Circuit Court Judges - Nonpartisan General Elections

This bill establishes new procedures for the nonpartisan election of circuit court judges.

Fiscal Summary

State Effect: The State Board of Elections (SBE) can handle the bill's requirements with existing resources.

Local Effect: Minimal increase in expenditures for local boards of election in specified counties to print paper primary ballots for voters not affiliated with the two principal political parties who can vote in primary elections for circuit court judges under this bill.

Small Business Effect: None.

Analysis

Bill Summary: A candidate for election as judge of a circuit court (1) may not be nominated at a primary election; (2) may not be nominated to the ballot by a party that is not required to nominate candidates by primary election; and (3) must be elected at a general election on a nonpartisan basis.

A candidate for election to the circuit court must, without party designation or regard to party affiliation:

- file a certificate of candidacy no later than 5 p.m. on the first Monday in August in the year of the general election for the office;
- be certified to the ballot;

- appear on the ballot;
- be voted on; and
- be elected.

If a candidate for election as judge of a circuit court dies or becomes disqualified before the ballots are printed, or at a time when the ballots can be reprinted, the name of the candidate may not appear on the ballot. If a candidate dies or becomes disqualified after the ballots are printed and too late for reprinting, and if that candidate receives sufficient votes to have been elected, the office must be deemed vacant and filled as if the vacancy had occurred during the term of office.

In a general election for judge of the circuit court for a county, a voter may vote for the number of candidates for which there are offices to be filled.

Current Law: A candidate for public office of a political party is nominated in accordance with the requirements of the Election Law Article. Circuit court judges are nominated by principal political parties during a primary election and are elected to office in a general election.

Article IV of the Maryland Constitution provides that vacancies in the office of a circuit court judge be filled by gubernatorial appointment until the election and qualification of a successor at the first general election more than one year after the occurrence of the vacancy. Vacancies created by the expiration of a judge's 15-year term are to be filled by a successor that is elected at the first biennial general election for Representatives in Congress.

The names of candidates for judge of the circuit court appear on all primary election ballots (the ballots of all parties participating in the primary). They may also be nominated by petition. Their names appear on general election ballots without a party label or other distinguishing mark or location that might indicate party affiliation.

Background: Unlike their colleagues on the Court of Appeals and the Court of Special Appeals, circuit court judges may face a contested election in which qualified members of the Maryland Bar challenge the incumbent judges by filing as candidates. Circuit court judges are nominated by the two principal political parties during the primary election. Because Maryland holds closed primaries, in which only members of a particular political party may vote for that party's candidates for nomination, candidates for circuit court judge register their candidacies with both parties so as to appear on the ballots of both principal political parties during the primary. The practice of "cross-filing" candidacies dates back to 1941.

After the presidential primary in March 2004, a suit was filed in St. Mary's County circuit court requesting an injunction to prevent SBE from certifying the primary results of circuit court judge candidates on the grounds that unaffiliated voters, who generally are not permitted to vote in party nominating elections (the primary), are unconstitutionally disenfranchised from participating in the initial selection process for circuit court judges. Following a ruling by the trial court, the case, *Suessman v. Lamone*, 383 Md. 697 (2004), was appealed to the Court of Appeals. The court held that there is a legitimate State interest in keeping partisanship out of judicial elections, while holding on to the party primary system. The court held that the "State's attempts to achieve this goal do not violate the equal protection provisions of either the Maryland or Federal Constitutions simply because some voters who decline to join a political party nevertheless wish to vote in that party's primary."

Local Expenditures: This bill requires nonpartisan elections for circuit court judges. Local school board elections are the only nonpartisan elections in Maryland. Therefore, jurisdictions that appoint school boards do not hold any nonpartisan primary elections. Currently, four jurisdictions have exclusively appointed local boards of education (Baltimore City, and Anne Arundel, Baltimore, and Wicomico counties). Under the bill, these jurisdictions need to print paper primary ballots for absentee and provisional voters who do not belong to the two principal political parties, at a cost of \$0.35 per ballot. Pursuant to Chapter 561 of 2001 (HB 1457), SBE shares the costs of printing paper ballots with the local boards of elections.

SBE advises that a fair amount of school board elections do not require a primary election because the number of candidates is less than or equal to twice the number of available school board vacancies. Therefore, even jurisdictions that elect school boards could incur the expenses mentioned above.

As of December 2012, 691,178 voters in Maryland were not registered with the two principal political parties. Of this group, 224,770 were registered in jurisdictions with appointed boards of education.

Additional Information

Prior Introductions: SB 46 of 2007, a similar bill, passed the Senate and received a hearing in the House Judiciary Committee, but was subsequently withdrawn. SB 324 of 2006, another similar bill, passed the Senate as amended and received a hearing in the House Judiciary Committee, but no further action was taken. SB 145 of 2006, a similar bill, received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 384 was heard in the House Judiciary Committee and subsequently withdrawn. Similar bills were also considered in the 2003 session.

Cross File: None.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; Baltimore City; Maryland State Board of Elections; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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ncs/kdm

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