

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

Senate Bill 502

(Senator Miller, *et al.*)

Judicial Proceedings

Judiciary

Judges - Mandatory Retirement Age

This proposed constitutional amendment, if approved by the voters at the next general election, would raise the mandatory retirement age for judges from age 70 to 73 for judges who are first elected or appointed to office *on or after* the date the constitutional amendment is declared by the Governor to be adopted. Current judges who are in office when the constitutional amendment is adopted and reach age 70 before the completion of their term may petition the Governor for an extension to serve until they complete their term or reach age 73, whichever comes first. The Governor may extend a judge’s term for the purpose of granting such an extension.

Fiscal Summary

State Effect: If approved by the voters at referendum, State pension contributions for sitting judges likely *decrease* by as much as \$1.4 million beginning in FY 2019, but actual savings are less if the Governor does not receive or approve petitions from some sitting judges to extend their tenure. Raising the retirement age for future judicial appointees has no fiscal effect within the timeframe covered by this fiscal and policy note because they are not eligible to retire for five years. However, to the extent that the proposed constitutional amendment causes future judicial appointees to work past the age of 70, it may reduce State pension liabilities and contributions in the out-years due to deferred retirement payments. No effect on revenues.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	0	(1,420,000)	(1,466,000)	(1,512,000)
Net Effect	\$0	\$0	\$1,420,000	\$1,466,000	\$1,512,000

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: It is assumed that the potential for increased costs to notify voters of any constitutional amendments proposed by the General Assembly, and to include any proposed constitutional amendments on the ballot at the next general election, will have been anticipated in local boards of elections' budgets.

Small Business Effect: None.

Analysis

Current Law/Background: Article IV, § 3 of the Maryland Constitution institutes mandatory retirement for all circuit, District, and appellate court judges at age 70. However, retired judges, except retired Orphans' Court judges, may be appointed on a temporary basis by the Chief Judge of the Court of Appeals to serve as a judge on any court except an Orphans' Court, regardless of age. Exceptions allow former circuit court judges in Montgomery and Harford counties to perform acts that a judge of the Orphans' Court in their respective counties is authorized to perform.

Most judges within the State are appointed and retained through a hybrid process. At all four court levels (the Court of Appeals, the Court of Special Appeals, circuit courts, and the District Court), the Governor appoints a qualified member of the Maryland Bar in the case of a vacancy or the creation of a new judgeship. For both appellate courts, these appointments must be confirmed by the Maryland Senate, and the judge holds the office until the first general election following the expiration of one year from the date of the occurrence of the vacancy. At the general election, the incumbent judge's name is placed on the ballot without opposition, and citizens vote for or against the retention of the judge for a 10-year term. For the District Court, judges are appointed by the Governor and serve 10-year terms upon confirmation by the Senate; when they reach the end of their term, they must be reappointed by the Governor.

In contrast to appellate judges in the State, circuit court judges face a different process. They are also appointed by the Governor and must stand for election at the first general election following the expiration of one year after the occurrence of the vacancy. However, unlike their colleagues on the appellate courts, they are elected to 15-year terms (which begin following their election) and may face a contested election in which any member of the Maryland Bar who meets the minimum constitutional requirements may challenge the incumbent judges by filing as a candidate. Thus, judges at the circuit court level are the only judges within the State who may face a contested election in order to retain their appointment. At the conclusion of their 15-year term as an elected judge, they may face another contested election to remain on the bench.

There is no salary scale for judges; rather, their compensation is dictated by the court on which they sit, not their tenure in that position.

Judges' Retirement System

All circuit, District, and appellate court judges are members of the Judges' Retirement System (JRS) as a condition of their employment. The employee contribution for JRS members is 8% of compensation, but after 16 years of service, members cease making employee contributions and earning service credit.

Eligibility requirements for normal service retirements under JRS differ for members who joined before July 1, 2012, and those who joined on or after that date. Members who joined prior to that date vest immediately and are eligible to retire at age 60. Members who joined on or after that date vest after five years and are also eligible to retire at age 60. A full service retirement is equal to two-thirds of the salary of a judge sitting in a similar position as the retiree at the time of termination of employment or retirement; retirees with fewer than 16 years of service in JRS receive a prorated benefit based on their years of service.

As of June 30, 2015, there were 307 active members of JRS. At that time, their average age was 58.1, and their average service was 8.9 years.

State Fiscal Effect: The proposed constitutional amendment does not alter the total number of sitting judges, and reduced turnover among judges as a result of longer terms on the bench has no effect on judicial compensation. Therefore, the proposed constitutional amendment has no direct effect on the State's judicial payroll.

Possible Longer Terms for Sitting Judges

The proposed constitutional amendment allows current judges who remain in service and who will reach age 70 *on or after* mid-November 2016 (when the amendment would be approved by voters and declared by the Governor to have been adopted) to petition the Governor to remain on the bench until they reach age 73 or their term expires, whichever comes first. If their petition is approved by the Governor, these individuals would be eligible to continue serving as judges for up to 3 more years and earn additional service credit in JRS if they have not already earned the maximum 16 years allowed. Thus, the proposed constitutional amendment only has a fiscal effect to the extent that the judges who meet these criteria would not otherwise earn the full 16 years of service in JRS before reaching age 70.

The proposed constitutional amendment is subject to approval by the voters at the November 2, 2016 general election. Assuming it takes two weeks to certify the election results and have the Governor issue a proclamation, the amendment would take effect

November 16, 2016. The Administrative Office of the Courts provided data on the age, tenure, and term expiration for each of 293 sitting judges. Using this information, the Department of Legislative Services has determined that these sitting judges fall into three main groups:

- 5 judges would reach age 70 before the amendment took effect and have to retire;
- 83 judges would reach age 70 after the amendment took effect but before their term expires and could petition the Governor to remain on the bench until age 73 or their term expires, whichever comes first; and
- 205 judges would be reappointed or reelected before reaching age 70 and then could petition the Governor for an extension if they reach age 70 before their subsequent term expires.

Pension Costs

In all, 68 current judges will turn 70 before earning the maximum 16 years of service credit in JRS; of those, 4 will be required to retire before the amendment would take effect, leaving 64 judges who may earn more service credit in JRS under the proposed constitutional amendment if they successfully petition the Governor to extend their tenure on the bench.

The General Assembly's consulting actuary has determined that any additional service credit earned by sitting judges able to work for more years is more than offset by actuarial savings generated by deferred benefit payments to these individuals because they are working longer at an advanced age. Therefore, there is likely a net savings to the State in the form of reduced pension liabilities and employer contributions. Given the timing of the election at which the proposed constitutional amendment would be approved and of the actuarial valuations conducted by the State Retirement and Pension System, any fiscal effect in the form of reduced State pension contributions would not begin until fiscal 2019. If all 64 judges successfully petition to remain on the bench, the actuary estimates that first-year savings in State pension contributions total \$1,420,000, with savings continuing to accrue in future years according to actuarial assumptions. JRS contributions are paid with general funds. To the extent that some judges do not request or are not granted extensions, the savings are less.

All judges appointed for the first time following the approval of the amendment would be eligible for the longer terms, but they are subject to a five-year vesting period and, therefore, would not be eligible for retirement during the time period covered by this fiscal and policy note. To the extent that the proposed constitutional amendment causes future judges to work past the age of 70, it likely reduces future State pension liabilities and contributions due to deferred retirements.

Referendum Costs

State costs of printing 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). However, 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, the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

Local Fiscal Effect: 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 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: SB 847 of 2015, a similar bill as introduced, passed the Senate. It was amended in the House to be identical to this bill as introduced and passed second reading. However, no further action was taken by the House.

Cross File: HB 481 (Delegate Vallario, *et al.*) - Judiciary.

Information Source(s): Maryland State Retirement Agency, Cheiron, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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Analysis by: Michael C. Rubenstein

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