

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 179

(Senator Kelley, *et al.*)

Judicial Proceedings

Circuit Court Judges - Selection, Qualifications, and Term of Office

This proposed constitutional amendment alters the method of selection and tenure of circuit court judges. Circuit court judges must be selected by gubernatorial appointment, subject to confirmation by the Senate, then reappointed, as specified. The bill decreases the term of office from 15 to 10 years. The bill also requires that if the Governor appoints a judicial nominating commission or similar body to propose nominees for appointment to a court, the commission or body must reflect the demographic diversity of the State or the judicial circuit for which the commission or body is charged with proposing nominees.

Fiscal Summary

State Effect: None. It is assumed that the potential for increased costs to include any constitutional amendments proposed by the General Assembly on the ballot at the next general election will have been anticipated in the State Board of Elections' budget.

Local Effect: None. 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

Bill Summary: Any vacancy in a circuit court judgeship must be filled in the same manner as a vacancy in the District Court. Specifically, when a vacancy occurs, the Governor (with advice and consent of the Senate) appoints an individual who is qualified to fill the office.

All hearings, deliberations, and debate on the appointee's confirmation must be public, and the Senate or any committee or subcommittee may not conduct hearings, deliberations, or debate on a confirmation in secret or executive session. Confirmation by the Senate must be made by a majority vote of all members of the Senate.

A circuit court judge appointed by the Governor may take office upon qualification and before confirmation by the Senate but must cease to hold office if the Senate does not confirm the appointment within specified timeframes. Each circuit court judge appointed and confirmed holds the office for a term of 10 years or until the judge attains the age of 70, whichever occurs first. If the term of a judge expires before the judge has attained the age of 70, the judge must be reappointed by the Governor, by and with the advice and consent of the Senate, for another 10-year term or until the judge reaches the age of 70, whichever occurs first.

For the purposes of implementing these changes:

- each circuit court judge already elected to office on the effective date of this constitutional amendment continues in office until the end of the elected term or until the judge attains the age of 70, whichever occurs first; thereafter, continuance of the judge in office becomes subject to the provisions described above; and
- each circuit court judge who is in office, but who has not been elected by the voters to that office as of the effective date of this constitutional amendment, must be reappointed to that office within 15 days after the effective date of the amendments. Thereafter, continuance of the judge in office becomes subject to the method described above.

Current Law: Judges of the circuit courts are elected at the general election by the qualified voters of the respective county or Baltimore City in which the circuit court sits. This is a “contested” election, in which any challenger who meets the constitutional requirements may run. Each judge holds the office for 15 years from the time of election and until either the successor is elected and qualified or the judge turns 70 years old, whichever occurs first.

If a circuit court judge becomes unable to discharge the judge's duties due to sickness or mental or physical infirmity, the General Assembly, by a two-thirds vote of each house and with approval of the Governor, may retire the judge from office.

On any vacancy in a circuit court judgeship, the Governor must appoint a replacement, who holds the office until the election and qualification of a successor. The successor must be elected:

- if the vacancy occurs due to the expiration of a 15-year term, at the first general election following the expiration of the term; or
- if the vacancy occurs otherwise, at the next general election that occurs after one year following the occurrence of the vacancy.

Except in the case of reappointment of a judge, no person may be appointed who would become disqualified by reason of age prior to the prescribed time when the judge's successor would have been elected.

A circuit court judge must retire when the judge reaches age 70.

Background: 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 Senate, and the judge holds the office until the next 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.

To assist in the selection process for judges at all levels, numerous governors since 1970 have issued executive orders creating judicial nominating commissions to recommend candidates for appointment. The nominating commissions review applications from interested attorneys, interview candidates, and consider recommendations from citizens and various bar associations. The commissions must submit to the Governor a list of candidates who are deemed to be legally and professionally most fully qualified for judicial office, and the Governor must make the appointment from the list.

As specified above, in contrast to the other judges in the State, circuit court judges face a different process. Because any member of the Maryland Bar who meets the minimum constitutional requirements may challenge the incumbent judges by filing as a candidate, 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. It is also only at the circuit court level where an individual may become a judge without a gubernatorial appointment and without being screened and recommended by a judicial nominating commission.

The process of judicial selection and retention in Maryland is similar to the methods that many other states use to fill their judicial vacancies. According to the National Center for State Courts, judges at all levels are initially selected through either partisan or nonpartisan elections in 22 states, while an additional 10 states hold elections only for some judges.

Almost half of the states enlist a judicial nominating commission for the initial selection of some or all judges. Regarding the retention or continuance of judges in office, at least some judges must stand for reelection in approximately 30 states. Of these states, in approximately 20 states, all judges are subject to reelection, while in the remaining states, including Maryland, only some judges face contested elections and the remainder stand in retention elections only or are otherwise reappointed. Nine other states exclusively use retention elections for all judges. Several states select and retain judges through legislative election and reelection. Other states either reappoint their judges or do not have a retention method since the judges receive a lifetime tenure upon selection.

The U.S. Supreme Court recently addressed one of the issues potentially arising from judicial elections. In *Williams-Yulee v. Florida Bar*, No. 13–1499, 575 U.S. __ (2015), a Florida attorney sued the Florida State Bar Association when she was reprimanded and fined for signing her name to a fundraising letter in violation of a rule prohibiting judicial candidates from personally soliciting contributions. The Florida Supreme Court upheld the recommended sanctions, in part noting that the personal solicitation of campaign funds raises an appearance of impropriety and may result in the public questioning the judge’s impartiality. In an opinion authored by Chief Justice Roberts, the court affirmed and stated that a state’s compelling interest in maintaining public trust in judicial integrity withstood the strict scrutiny required of any measure limiting free speech protected under the First Amendment. Accordingly, the court held that states may prohibit judicial candidates from personally soliciting funds for their election campaigns.

State Fiscal Effect: 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.

The Department of Legislative Services also notes that altering the terms of office for circuit court judges does not directly affect when and how judges qualify to receive benefits under the judicial pension system.

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 367 of 2015 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 582, received a hearing in the House Judiciary Committee but was subsequently withdrawn.

Cross File: HB 448 (Delegate Sydnor) – Judiciary.

Information Source(s): Governor’s Office, Judiciary (Administrative Office of the Courts), Maryland State Board of Elections, National Center for State Courts, Department of Legislative Services

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