

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1071 (Delegate West, *et al.*)
 Judiciary

Courts - Business and Technology Court

This bill establishes a Business and Technology Court (business court), the purpose of which is to handle business and technology matters in a coordinated, efficient, and responsive manner and to afford convenient access to attorneys and litigants in legal actions with a significant business or technology component. In fiscal 2020 and annually thereafter, the Governor must include an appropriation sufficient for the business court in the budget of the Judiciary.

Fiscal Summary

State Effect: General fund expenditures increase by a minimum of \$154,500 in FY 2019 for staff and one-time computer programming costs. Future years reflect annualization. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	154,500	108,800	112,200	116,200	120,300
Net Effect	(\$154,500)	(\$108,800)	(\$112,200)	(\$116,200)	(\$120,300)

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

Local Effect: The bill is not anticipated to materially impact the overall workload of circuit courts or local finances, as discussed below.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Jurisdiction of the Business Court

The business court has exclusive original jurisdiction over specified actions, including those (1) arising out of technology development, maintenance, and consulting agreements; (2) arising out of technology licensing agreements, including software licensing, biotechnology licensing, or any agreement involving the licensing of intellectual property rights, including patent rights; (3) relating to the internal affairs of businesses, including the rights or obligations of stockholders, debtholders, directors, officers, and other management; (4) claiming breach of contract, fraud, misrepresentation, or statutory violation arising out of business dealings; (5) arising out of commercial bank transactions; and (6) relating to trade secret, noncompete, nonsolicitation, or confidentiality agreements.

On a party's written request or on a court's own initiative, an action may be assigned to the business court if the judge determines that the action presents business or technological issues of such a complex or novel nature that specialized treatment is likely to improve the administration of justice. A judge making such a determination must consider specified factors, including the nature of the relief sought and whether business or technology issues predominate over other issues presented in the action. The business court has concurrent jurisdiction over complaints that meet such requirements if the complaint seeks compensatory damages totaling \$100,000 or more or primarily injunctive or other equitable relief.

The business court does not have jurisdiction over specified matters, including (1) personal injury, survival, or wrongful death matters; (2) medical malpractice matters; (3) disputes between landlords and tenants; (4) professional fee disputes; (5) proceedings to enforce judgments of any type; and (6) disputes between an employer and an employee that are not within the jurisdiction of the business court, including claims of discrimination, hostile work environment, or unpaid wages.

Assignment to Business Court and Duties of Judges

A request for assignment of an action to the business court must (1) be filed in the county in which venue is appropriate pursuant to current law and (2) identify the amount in controversy in the action. For an action before the business court, venue is proper in the county in which the business court judge assigned to the action sits.

A business court judge generally presides over any action assigned to the business court. At the discretion of the Chief Business Court Judge, a business court judge may preside

over actions before the circuit court. The Chief Business Court Judge must assign each action in the business court to a business court judge on a rotating basis. In general, the assignment of a business court judge is not related to the location in which the action is filed or the circuit in which the business court judge sits. However, the order of assignment may be altered at the discretion of the Chief Business Court Judge or the Chief Business Court Judge's designee to avoid undue burden on litigants or the business court. The business court judge assigned to an action hears all proceedings until the matter is concluded. However, to avoid undue delay, prejudice, or injustice and to allow for the timely and fair administration of the action, the Chief Business Court Judge or the Chief Business Court Judge's designee may designate another business court judge to hear a pretrial matter or take other necessary action. The Chief Business Court Judge or the Chief Business Court Judge's designee may designate another judge of the circuit court instead of another business court judge only if another business court judge is not available and in exigent circumstances.

Promptly after an action is assigned, the business court judge must (1) hold a case management conference, as specified; (2) hold a scheduling conference, as specified; and (3) enter a scheduling order that includes case management decisions made at or as a result of these conferences. The bill also establishes procedures if a party seeks expedited relief in a business court and outlines provisions allowing case management and scheduling conferences and other proceedings before the business court to be conducted remotely if specified conditions are met.

Business court judges are encouraged to issue written opinions if the subject of the action is not routine or involves new, novel, or unresolved issues of law or the opinion would enrich the existing body of law. The bill specifies other provisions relating to written opinions of the business court. On assignment to the business court and at least once a year thereafter, a business court judge must attend an educational program developed by the advisory board.

Business Court Judges – Selection and Compensation

By January 1, 2019, and within 60 days of any judicial opening in the business court, the administrative judges of the circuit courts must nominate circuit court judges for appointment to the business court, as specified. The Chief Judge of the Court of Appeals must appoint three or four sitting circuit court judges from those judges nominated under a specified process to serve as business court judges. A judge appointed as a business court judge must be specially trained in business and technology and have an interest and willingness to serve and comply with the requirements of the business court. When appointing business court judges, the Chief Judge of the Court of Appeals may consider the business, finance, and technological experience and training of a nominee. A business court judge receives the same compensation and benefits as a circuit court judge.

Oversight of the Business Court

The Chief Judge of the Court of Appeals must select a business court judge to serve as Chief Business Court Judge, who may select a business court administrator. The bill also establishes a Business Court Advisory Board, which must assist in the administration and operation of the business court. The administration of the business court must be conducted jointly in the Circuit Court for Baltimore City and the Circuit Court for Montgomery County.

The advisory board is responsible for specified matters, including (1) developing and implementing standardized forms, business court protocols, and case management procedures, including discovery, electronically stored information, and scheduling conference matters; (2) developing and implementing an electronic filing system for business court actions that allows parties to electronically submit filings and access pleadings; (3) developing educational programs for business court judges, as specified; and (4) monitoring and tracking the progress and resolution of cases assigned to the business court. Members of the advisory board may be sitting business court judges, sitting appellate judges, former judges, practitioners, or business or community leaders.

In consultation with the advisory board, the Chief Business Court Judge must develop a procedure by which an action may be assigned to the business court and procedures for assigning an action to alternative dispute resolution conducted by a qualified individual who is specially trained in business and technology. The Chief Business Court Judge must facilitate a meeting of all business court judges at least quarterly to discuss the administration and operation of the business court, as specified.

The Chief Business Court Judge must consult with the advisory board to facilitate discussions, activities, and other interactions among the business court judges. At least once every three years, the advisory board must conduct a review of the business court's operations. The review must assess specified items, including the types and number of actions assigned to the business court and the administration, duration, and resolution of actions assigned to the business court. By December 1 of the year in which the review was conducted, or more often if necessary, the advisory board must submit a written report of the review to the Governor, the Chief Judge, the Chief Business Court Judge, the President of the Senate, and the Speaker of the House.

Funding

In fiscal 2020 and annually thereafter, the Governor must include in the annual budget bill an appropriation for the Judiciary's budget designated for the business court. The appropriation must be sufficient to pay all necessary expenses of the business court, including the compensation of business court judges and staff dedicated to the business

court. The Chief Business Court Judge may use the appropriation to reimburse expenses incurred by a business court judge related to attendance at educational programs developed by the advisory board or at an enrichment activity offered by another organization, including travel expenses, registration fees, or other related costs.

Current Law/Background: There is no Business and Technology Court in the State; however, Maryland Rule 16-308 requires, subject to the availability of resources, a program approved by the Chief Judge of the Court of Appeals to be established to enable each circuit court to handle business and technology matters in a coordinated, efficient, and responsive manner and to afford convenient access to attorneys and litigants in business and technology matters. The Judiciary advises that only five circuit courts have cases admitted to a business and technology track on a regular basis (Baltimore City and Anne Arundel, Baltimore, Howard, and Montgomery counties). In fiscal 2017, 53 cases were admitted to the business and technology track.

Maryland Rule 16-108 allows the Chief Judge of the Court of Appeals, by order, to assign a circuit court judge to sit temporarily in another circuit court. The order must specify the court in which the judge is to sit and the duration of the assignment. While so assigned, the judge possesses all of the power and authority of a judge of a court to which the judge is assigned.

In general, a civil action must be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation. In addition, a corporation also may be sued where it maintains its principal offices in the State.

State Expenditures: General fund expenditures increase by a minimum of \$154,527 in fiscal 2019. This estimate reflects the cost of computer programming changes and hiring one business court administrator (who is assumed to start January 1, 2019) to assist in the oversight and implementation of the business court and the activities of the advisory board. It includes a salary, fringe benefits, one-time start-up costs (including the programming costs in fiscal 2019 only), and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$ 54,024
Computer Programming	95,300
Operating Expenses	<u>5,203</u>
Minimum FY 2019 State Expenditures	\$154,527

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Although the bill does not increase the overall number of cases handled by the Judiciary and the circuit courts, the Judiciary notes that it may, nevertheless, result in additional expenditures not included above, depending on implementation; the Department of Legislative Services (DLS) agrees.

Of the 239,134 original and reopened civil filings in fiscal 2017, less than 1% were admitted to the business and technology case track. Judges who now handle business and technology cases also preside over a full docket of other cases. However, this bill creates an entirely separate court for these cases, with dedicated judges. While it is assumed that the Chief Business Court Judge will use the discretion afforded in the bill to allow business court judges to preside over (other) actions before the circuit court, it is likely that the responsibilities given to the individual appointed as the Chief Business Court Judge are substantial enough to require additional resources. Furthermore, the bill requires quarterly meetings of all business court judges and attendance at educational programs, allows specified judges to be appointed to the advisory board, and places a stronger emphasis on written opinions, all of which impact the amount of time a judge can devote to other matters outside the jurisdiction of the business court. It is assumed that additional judgeships are not needed, as the bill requires sitting circuit court judges to be appointed as business court judges. However, DLS agrees that the bill likely necessitates additional judicial resources not included in the estimate above. DLS notes that the Judiciary increasingly relies on the use of retired judges to supplement current judicial resources throughout the State. The proposed fiscal 2019 State budget includes approximately \$6.7 million in funding for retired judges. Using the fiscal 2019 estimate, and *for illustrative purposes only*, for every 1% increase in the use of retired judges, who may be necessary to absorb a portion of the regular workload of individuals appointed as business court judges, general fund expenditures increase by approximately \$67,000 annually. Additional costs, such as those associated with training and travel to meetings, are also not included in the estimate above.

DLS also notes that the bill requires the Governor, beginning in fiscal 2020, to include an appropriation designated for the business court. However, an Opinion of the Attorney General has stated that legislation fails as constitutionally recognized mandatory funding if it does not prescribe a specific dollar amount or provide an objective basis from which a level of funding may be computed. Because the bill only requires that the appropriation be “sufficient to pay all *necessary* expenses of the business court,” it is likely not considered a mandated appropriation, as a determination of “necessary” expenses is too subjective.

Local Expenditures: Although circuit courts are partially funded by local jurisdictions, because any additional expenses not quantified above are the responsibility of the State, such as costs associated with a potential increased use of retired judges, and travel and training costs, the bill is not anticipated to impact local finances.

Additional Comments: The bill requires the Governor to include a sufficient appropriation for the proposed business court. However, the Governor is constitutionally prohibited from adding to or subtracting from the budget of the Judiciary due to the separation required of the three branches of government.

It is the Chief Judge of the Court of Appeals who develops the budget for the Judiciary, which is then included as part of the annual State budget submitted by the Governor to the General Assembly for consideration.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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