

Department of Legislative Services  
 Maryland General Assembly  
 2019 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 182  
 Judiciary

(Delegate Cardin, *et al.*)

Judges - Mandatory Retirement Age

This proposed constitutional amendment, if approved by the voters at the next general election, would raise the mandatory retirement age, from 70 to 73, for judges who are first elected or appointed to office on or after the 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 term completion or 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 liabilities likely *decrease* by approximately \$9.91 million and the normal cost decreases by \$950,000. Therefore, State pension contributions likely decrease by \$1.95 million beginning in FY 2023, 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, but State pension liabilities and contributions may be reduced in the out-years due to deferred benefit payments. No effect on revenues.

| (in dollars)   | FY 2020 | FY 2021 | FY 2022 | FY 2023     | FY 2024     |
|----------------|---------|---------|---------|-------------|-------------|
| Revenues       | \$0     | \$0     | \$0     | \$0         | \$0         |
| GF Expenditure | 0       | 0       | 0       | (1,950,000) | (2,010,000) |
| Net Effect     | \$0     | \$0     | \$0     | \$1,950,000 | \$2,010,000 |

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

**Local Effect:** None.

**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 Harford and Montgomery 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 5 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, 2018, there were 316 active members of JRS. At that time, their average age was 57.8 and their average service was 8.4 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* November 2020 (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 adds to pension liabilities 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, 2020 general election. If approved, the amendment would take effect shortly thereafter, when the Governor issues a proclamation that it was adopted. Based on age and tenure information for members of JRS:

- 28 judges reach age 70 before the amendment takes effect and have to retire, so the bill does not affect them;
- 61 judges reach age 70 after the amendment takes effect but before accruing the full 16 years of service (assuming they continue serving until age 70); and
- 227 attain the full 16 years of service before reaching age 70 (assuming they continue serving that long).

This analysis assumes that all judges who reach age 70 after the amendment takes effect continue serving an additional 3 years after successfully petitioning the Governor to remain on the bench, regardless of whether they have accrued the full 16 years of service for their full normal service retirement.

### *Pension Costs*

The proposed constitutional amendment has two offsetting effects on pension costs, but the net effect is a reduction in State pension costs. It likely *increases* pension costs for the estimated 61 current judges who will turn 70 before earning the maximum 16 years of service credit in JRS, assuming they continue serving until age 70. These judges may earn up to 3 more years of service credit in JRS under the proposed constitutional amendment if they successfully petition the Governor to extend their tenure on the bench. However, the proposed amendment likely *reduces* pension costs by allowing 227 judges to defer their retirement for up to 3 years, thereby reducing their total pension payments. The General Assembly's consulting actuary advises that actuarial retirement rate assumptions for sitting judges likely change to reflect their longer service.

The 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 as well as the 227 active members who continue working without accruing additional benefits. Therefore, there is likely a net savings to the State in the form of reduced pension liabilities and employer contributions due to members working longer at an advanced age.

If the constitutional amendment is approved by the voters in November 2020, the change in retirement age would first be recognized with the June 30, 2021 actuarial valuation, which determines pension contribution rates for fiscal 2023. Thus, there is no fiscal effect until fiscal 2023. If all eligible judges successfully petition to remain on the bench, the actuary estimates that pension liabilities decrease by \$9.91 million, and the normal cost decreases by \$950,000. The State Retirement and Pension System uses a 25-year closed amortization schedule as of July 1, 2013. Amortizing the reduction in liabilities over the remaining years of the closed amortization period and adding the full normal cost savings results in first-year savings in State pension contributions of \$1.95 million, 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.

**Additional Comments:** Judges are entitled to unlimited paid sick leave for any period of an illness or temporary disability that precludes them from carrying out their judicial duties. To the extent that older judges may be more likely to use their unlimited sick leave benefits, and thereby would need to be replaced on the bench during their absence, personnel expenditures for the Judiciary (Administrative Office of the Courts) may increase. This analysis does not reflect those potential costs because they cannot be reliably quantified.

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### **Additional Information**

**Prior Introductions:** HB 1779 of 2018 received a hearing in the House Judiciary Committee; no further action was taken on the bill. As amended, SB 502 of 2016 was identical to this bill. It passed the Senate and passed second reading in the House, but no further action was taken. Its cross file, HB 481, received a hearing in the House Judiciary Committee; no further action was taken.

**Cross File:** None.

**Information Source(s):** Bolton Partners, Inc.; Judiciary (Administrative Office of the Courts); State Retirement Agency; Department of Legislative Services

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