Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 295   (Senator Kramer)

Judicial Proceedings

Circuit Court Judges - Election

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, followed by approval or rejection via retention election by the voters.

Fiscal Summary

State Effect: None.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Any vacancy in a circuit court judgeship must be filled in a similar manner as a vacancy on the Court of Appeals or Court of Special Appeals. Specifically, when a vacancy occurs, the Governor (with advice and consent of the Senate) appoints a successor who holds the office until the next general election following the expiration of 1 year from the date of the vacancy. Retention of the judge in office is subject to approval or rejection by the voters of the county (or Baltimore City) from which the judge was appointed at that election, and at the general election every 15 years thereafter. The judge's name is placed on the appropriate ballot without opposition. If the voters reject the judge's retention in office, or if the vote is tied, the office becomes vacant 10 days after certification of the election returns.

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 next general election after the end of the elected term or until the judge attains the age of 70, whichever comes first; thereafter, continuance of the judge in office becomes subject to the provisions described above; and
- each circuit court judge in office, but who has not been elected 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 retention method described above.

Current Law: For more information about how judges in Maryland are selected, please see the **Appendix – Judicial Appointments and Elections.**

Additional Information

Prior Introductions: SB 415 of 2020 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 1038 of 2020 received a hearing in the House Judiciary Committee, but no further action was taken. SB 246 of 2019 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 724 of 2017 received a hearing in the House Judiciary Committee, but no further action was taken. Similar bills were also introduced in prior sessions.

DesignatedCross File: None.

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

Fiscal Note History: First Reader - January 21, 2021
rh/jkb

Analysis by: Tyler Allard

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

Appendix – Judicial Appointments and Elections

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. 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 makes the appointment from the list.

For both appellate courts, these appointments must be confirmed by the Senate, and the judge holds the office until the next statewide general election that occurs at least 1 year after 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. Appellate judges frequently receive 80% or more of the vote in favor of retention. For the District Court, judges are appointed by the Governor and serve 10-year terms upon confirmation by the Senate, without any required judicial election.

Upon a circuit court vacancy, the Governor must appoint an individual who will hold the office until the first statewide general election that follows the occurrence of the vacancy, or until the first such general election that occurs at least 1 year after the opening of the vacancy, as specified. Unlike the process for other judges in the State, voters in each county (or Baltimore City) elect their respective circuit court judges to 15-year terms in contested elections in which any challenger who meets the minimum constitutional requirements may run.

Thus, judges at the circuit court level are the only judges in the State who may face a contested election in order to retain their appointment, and it is only at the circuit court level where an individual (*i.e.*, a successful challenger) may become a judge without a gubernatorial appointment and without being screened and recommended by a judicial nominating commission. In the 2020 general election, four nonincumbent challengers won circuit court seats in Charles, Howard, and Prince George's counties. Prior to that election, only nine appointed incumbents had been defeated since 1986.

According to a National Center for State Courts compendium, the other 49 states use a variety of methods for selecting judges across all levels of service – from partisan or

nonpartisan election of all judges, to gubernatorial and/or legislative appointment of all judges, to various combinations thereof.