

HOUSE BILL 187
CONSTITUTIONAL AMENDMENT

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HB 257/97 - JUD

1998 Regular Session
8lr0106

By: **Delegates Dembrow, Palumbo, Genn, Menes, R. Baker, Conroy, M. Burns, Turner, and Bissett**

Introduced and read first time: January 22, 1998

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Courts of Appeals - Name Change**

3 FOR the purpose of changing the name of the Court of Appeals to the Supreme Court;
4 changing the name of the Court of Special Appeals to the Appellate Court;
5 clarifying language; providing for a certain date for this amendment to take
6 effect; and submitting this amendment to the qualified voters of the State of
7 Maryland for their adoption or rejection.

8 BY proposing an amendment to the Constitution of Maryland
9 Article II - Executive Department
10 Section 6(c) and (g)

11 BY proposing an amendment to the Constitution of Maryland
12 Article III - Legislative Department
13 Section 5, 30, and 52(11)

14 BY proposing an amendment to the Constitution of Maryland
15 Article IV - Judiciary Department
16 Section 1, 3, 3A(a), 4B(a) and (b), 5A(c) and (d), 10(a), 14, 15, 16, 17, 18(b), 22,
17 and 41E

18 BY proposing an amendment to the Constitution of Maryland
19 Article V - Attorney-General and State's Attorneys
20 Section 6

21 BY proposing an amendment to the Constitution of Maryland
22 Article XVII - Quadrennial Elections
23 Section 3

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, (Three-fifths of all the members elected to each of the two Houses
26 concurring), That it be proposed that the Constitution of Maryland read as follows:

1

Article II - Executive Department

2 6.

3 (c) The General Assembly, by the affirmative vote of three-fifths of all its
4 members in joint session, may adopt a resolution declaring that the Governor or
5 Lieutenant Governor is unable by reason of physical or mental disability to perform
6 the duties of [his] THE GOVERNOR'S OR THE LIEUTENANT GOVERNOR'S office. When
7 action is undertaken pursuant to this subsection of the Constitution, the officer who
8 concludes that the other officer is unable, by reason of disability to perform the duties
9 of [his] THE OTHER OFFICER'S office shall have the power to call the General
10 Assembly into Joint Session. The resolution, if adopted, shall be delivered to the
11 SUPREME Court [of Appeals], which then shall have exclusive jurisdiction to
12 determine whether that officer is unable by reason of the disability to perform the
13 duties of [his] THAT OFFICER'S office. If the SUPREME Court [of Appeals]
14 determines that such officer is unable to discharge the duties of [his] THAT
15 OFFICER'S office by reason of a permanent disability, the office shall be vacant. If the
16 SUPREME Court [of Appeals] determines that such officer is unable to discharge the
17 duties of [his] THAT OFFICER'S office by reason of a temporary disability, it shall
18 declare the office to be vacant during the time of the disability and the SUPREME
19 Court shall have continuing jurisdiction to determine when the disability has
20 terminated. If the General Assembly and the SUPREME Court [of Appeals], acting in
21 the same manner as described above, determine that the Governor-elect or
22 Lieutenant Governor-elect is unable by reason of physical or mental disability to
23 perform the duties of the office to which [he] THE GOVERNOR-ELECT OR
24 LIEUTENANT GOVERNOR-ELECT has been elected, [he] THE GOVERNOR-ELECT OR
25 LIEUTENANT GOVERNOR-ELECT shall be disqualified to assume office.

26 (g) The SUPREME Court [of Appeals] shall have original and exclusive
27 jurisdiction to adjudicate disputes or questions arising from the failure of the
28 Governor-elect to take office, or the service of the Lieutenant Governor or President
29 of the Senate as acting Governor, or the creation of a vacancy in the office of Governor
30 or Lieutenant Governor by reason of disability, or the succession to the office of
31 Governor or Lieutenant Governor, or the exercise of the powers and duties of a
32 successor to the office of Governor.

33

Article III - Legislative Department

34 5.

35 Following each decennial census of the United States and after public hearings,
36 the Governor shall prepare a plan setting forth the boundaries of the legislative
37 districts for electing of the members of the Senate and the House of Delegates.

38 The Governor shall present the plan to the President of the Senate and Speaker
39 of the House of Delegates who shall introduce the Governor's plan as a joint
40 resolution to the General Assembly, not later than the first day of its regular session
41 in the second year following every census, and the Governor may call a special session
42 for the presentation of [his] THE GOVERNOR'S plan prior to the regular session. The

1 plan shall conform to Sections 2, 3 and 4 of this Article. Following each decennial
2 census the General Assembly may by joint resolution adopt a plan setting forth the
3 boundaries of the legislative districts for the election of members of the Senate and
4 the House of Delegates, which plan shall conform to Sections 2, 3 and 4 of this Article.
5 If a plan has been adopted by the General Assembly by the 45th day after the opening
6 of the regular session of the General Assembly in the second year following every
7 census, the plan adopted by the General Assembly shall become law. If no plan has
8 been adopted by the General Assembly for these purposes by the 45th day after the
9 opening of the regular session of the General Assembly in the second year following
10 every census, the Governor's plan presented to the General Assembly shall become
11 law.

12 Upon petition of any registered voter, the SUPREME Court [of Appeals] shall
13 have original jurisdiction to review the legislative districting of the State and may
14 grant appropriate relief, if it finds that the districting of the State is not consistent
15 with requirements of either the Constitution of the United States of America, or the
16 Constitution of Maryland.

17 30.

18 Every bill, when passed by the General Assembly, and sealed with the Great
19 Seal, shall be presented by the presiding officer of the house in which it originated to
20 the Governor for [his] THE GOVERNOR'S approval. All bills passed during a regular or
21 special session shall be presented to the Governor for [his] THE GOVERNOR'S
22 approval no later than 20 days after adjournment. Within 30 days after presentment,
23 if the Governor approves the bill, [he] THE GOVERNOR shall sign the same in the
24 presence of the presiding officers and Chief Clerks of the Senate and House of
25 Delegates. Every Law shall be recorded in the office of the SUPREME Court [of
26 Appeals], and in due time, be printed, published and certified under the Great Seal,
27 to the several Courts, in the same manner as has been heretofore usual in this State.

28 52.

29 (11) For the purpose of making up the Budget, the Governor shall require from
30 the proper State officials (including all executive departments, all executive and
31 administrative offices, bureaus, boards, commissions and agencies that expend or
32 supervise the expenditure of, and all institutions applying, for State moneys and
33 appropriations) such itemized estimates and other information, in such form and at
34 such times as directed by the Governor. An estimate for a program required to be
35 funded by a law which will be in effect during the fiscal year covered by the Budget
36 and which was enacted before July 1 of the fiscal year prior to that date shall provide
37 a level of funding not less than that prescribed in the law. The estimates for the
38 Legislative Department, certified by the presiding officer of each House, of the
39 Judiciary, as provided by law, certified by the Chief Judge of the SUPREME Court [of
40 Appeals], and for the public schools, as provided by law, shall be transmitted to the
41 Governor, in such form and at such times as directed by the Governor, and shall be
42 included in the Budget without revision.

Article IV - Judiciary Department

1

2 1.

3 The Judicial power of this State is vested in a SUPREME Court [of Appeals],
4 such intermediate courts of appeal as the General Assembly may create by law,
5 Circuit Courts, Orphans' Courts, and a District Court. These Courts shall be Courts of
6 Record, and each shall have a seal to be used in the authentication of all process
7 issuing from it.

8 3.

9 Except for the Judges of the District Court, the Judges of the several Courts
10 other than the SUPREME Court [of Appeals] or any intermediate courts of appeal
11 shall, subject to the provisions of Section 5 of this Article of the Constitution, be
12 elected in Baltimore City and in each county, by the qualified voters of the city and of
13 each county, respectively, all of the said Judges to be elected at the general election to
14 be held on the Tuesday after the first Monday in November, as now provided for in the
15 Constitution. Each of the said Judges shall hold [his] THE JUDGE'S office for the term
16 of fifteen years from the time of [his] THE JUDGE'S election, and until [his] THE
17 JUDGE'S successor is elected and qualified, or until [he] THE JUDGE'S shall have
18 attained the age of seventy years, whichever may first happen, and be reeligible
19 thereto until [he] THE JUDGE shall have attained the age of seventy years, and not
20 after. In case of the inability of any of said Judges to discharge [his] THE JUDGE'S
21 duties with efficiency, by reason of continued sickness, or of physical or mental
22 infirmity, it shall be in the power of the General Assembly, two-thirds of the members
23 of each House concurring, with the approval of the Governor to retire said Judge from
24 office.

25 3A.

26 (a) Any former judge, except a former judge of the Orphans' Court, may be
27 assigned by the Chief Judge of the SUPREME Court [of Appeals], upon approval of a
28 majority of the court, to sit temporarily in any court of this State, except an Orphans'
29 Court, as provided by law.

30 4B.

31 (a) (1) The Commission on Judicial Disabilities has the power to:

32 (i) Investigate complaints against any judge of the SUPREME Court
33 [of Appeals], any intermediate courts of appeal, the circuit courts, the District Court
34 of Maryland, or the orphans' court; and

35 (ii) Conduct hearings concerning such complaints, administer oaths
36 and affirmations, issue process to compel the attendance of witnesses and the
37 production of evidence, and require persons to testify and produce evidence by
38 granting them immunity from prosecution or from penalty or forfeiture.

1 (2) The Commission has the power to issue a reprimand and the power to
2 recommend to the SUPREME Court [of Appeals] the removal, censure, or other
3 appropriate disciplining of a judge or, in an appropriate case, retirement.

4 (3) All proceedings, testimony, and evidence before the Commission shall
5 be confidential and privileged, except as provided by rule of the SUPREME Court [of
6 Appeals]; the record and any proceeding filed with the SUPREME Court [of Appeals]
7 shall lose its confidential character, except as ordered by the SUPREME Court [of
8 Appeals].

9 (4) No judge shall participate as a member of the Commission in any
10 proceedings involving that judge's own conduct, and the Governor shall appoint
11 another judge as a substitute member of the Commission for those proceedings.

12 (5) The SUPREME Court [of Appeals] shall prescribe by rule the means
13 to implement and enforce the powers of the Commission and the practice and
14 procedure before the Commission.

15 (b) (1) Upon any recommendation of the Commission, the SUPREME Court
16 [of Appeals], after a hearing and upon a finding of misconduct while in office, or of
17 persistent failure to perform the duties of the office, or of conduct prejudicial to the
18 proper administration of justice, may remove the judge from office or may censure or
19 otherwise discipline the judge, or the SUPREME Court [of Appeals], after hearing and
20 upon a finding of disability which is or is likely to become permanent and which
21 seriously interferes with the performance of the judge's duties, may retire the judge
22 from office.

23 (2) A judge removed under this section, and the judge's surviving spouse,
24 shall have the rights and privileges accruing from the judge's judicial service only to
25 the extent prescribed by the order of removal.

26 (3) A judge retired under this section shall have the rights and privileges
27 prescribed by law for other retired judges.

28 (4) No judge of the SUPREME Court [of Appeals] shall sit in judgment in
29 any hearing involving that judge's own conduct.

30 5A.

31 (c) The continuance in office of a judge of the SUPREME Court [of Appeals] is
32 subject to approval or rejection by the registered voters of the appellate judicial circuit
33 from which [he] THE JUDGE was appointed at the next general election following the
34 expiration of one year from the date of the occurrence of the vacancy which [he] THE
35 JUDGE was appointed to fill, and at the general election next occurring every ten
36 years thereafter.

37 (d) The continuance in office of a judge of the APPELLATE Court [of Special
38 Appeals] is subject to approval or rejection by the registered voters of the
39 geographical area prescribed by law at the next general election following the
40 expiration of one year from the date of the occurrence of the vacancy which [he] THE

1 JUDGE was appointed to fill, and at the general election next occurring every ten
2 years thereafter.

3 10.

4 (a) (1) The Clerks of the Courts shall have charge and custody of records
5 and other papers and shall perform all the duties which appertain to their offices, as
6 are regulated by Law.

7 (2) The office and business of the Clerks, in all their departments, shall
8 be subject to and governed in accordance with rules adopted by the SUPREME Court
9 [of Appeals] pursuant to Section 18 of this article.

10 14.

11 The SUPREME Court [of Appeals] shall be composed of seven judges, one from
12 the First Appellate Judicial Circuit consisting of Caroline, Cecil, Dorchester, Kent,
13 Queen Anne's, Somerset, Talbot, Wicomico, and Worcester Counties; one from the
14 Second Appellate Judicial Circuit consisting of Baltimore and Harford Counties; one
15 from the Third Appellate Judicial Circuit, consisting of Allegany, Carroll, Frederick,
16 Garrett, Howard, and Washington Counties; one from the Fourth Appellate Judicial
17 Circuit, consisting of Prince George's County; one from the Fifth Appellate Judicial
18 Circuit, consisting of Anne Arundel, Calvert, Charles, and St. Mary's Counties; one
19 from the Sixth Appellate Judicial Circuit, consisting of Baltimore City; and one from
20 the Seventh Appellate Judicial Circuit, consisting of Montgomery County. The Judges
21 of the SUPREME Court [of Appeals] shall be residents of their respective Appellate
22 Judicial Circuits. The term of each Judge of the SUPREME Court [of Appeals] shall
23 begin on the date of [his] THE JUDGE'S qualification. One of the Judges of the
24 SUPREME Court [of Appeals] shall be designated by the Governor as the Chief Judge.
25 The jurisdiction of the SUPREME Court [of Appeals] shall be co-extensive with the
26 limits of the State and such as now is or may hereafter be prescribed by law. It shall
27 hold its sessions in the City of Annapolis at such time or times as it shall from time to
28 time by rule prescribe. Its session or sessions shall continue not less than ten months
29 in each year, if the business before it shall so require, and it shall be competent for the
30 judges temporarily to transfer their sittings elsewhere upon sufficient cause. The
31 salary of each Judge of the SUPREME Court [of Appeals] shall be that now or
32 hereafter prescribed by the General Assembly and shall not be diminished during
33 [his] THE JUDGE'S continuance in office. Five of the judges shall constitute a quorum,
34 and five judges shall sit in each case unless the SUPREME Court shall direct that an
35 additional judge or judges sit for any case. The concurrence of a majority of those
36 sitting shall be sufficient for the decision of any cause, and an equal division of those
37 sitting in a case has the effect of affirming the decision appealed from if there is no
38 application for reargument as hereinafter provided. In any case where there is an
39 equal division or a three to two division of the SUPREME Court a reargument before
40 the full Court of seven judges shall be granted to the losing party upon application as
41 a matter of right.

1 15.

2 Any judge of the SUPREME Court [of Appeals] or of an intermediate court of
3 appeal who heard the cause below either as a trial judge or as a judge of any
4 intermediate court of appeal as the case may be shall not participate in the decision.
5 In every case an opinion, in writing, shall be filed within three months after the
6 argument, or submission of the cause; and the judgment of the SUPREME Court [of
7 Appeals] shall be final and conclusive.

8 16.

9 Provision shall be made by Law for publishing Reports of all causes, argued and
10 determined in the SUPREME Court [of Appeals] and in the intermediate courts of
11 appeal, which the judges thereof, respectively, shall designate as proper for
12 publication.

13 17.

14 There shall be a Clerk of the SUPREME Court [of Appeals], who shall be
15 appointed by and shall hold [his] THAT office at the pleasure of said SUPREME Court
16 [of Appeals].

17 18.

18 (b) The Chief Judge of the SUPREME Court [of Appeals] shall be the
19 administrative head of the Judicial system of the State. [He] THE CHIEF JUDGE OF
20 THE SUPREME COURT shall from time to time require, from each of the judges of the
21 Circuit Courts, of the District Court and of any intermediate courts of appeal, reports
22 as to the judicial work and business of each of the judges and their respective courts.
23 [He] THE CHIEF JUDGE OF THE SUPREME COURT may, in case of a vacancy, or of the
24 illness, disqualification or other absence of a judge or for the purpose of relieving an
25 accumulation of business in any court assign any judge except a judge of the Orphans'
26 Court to sit temporarily in any court except an Orphans' Court. Any judge assigned by
27 the Chief Judge of the SUPREME Court [of Appeals] pursuant to this section has all
28 the power and authority pertaining to a judge of the court to which [he] THE JUDGE
29 is so assigned; and [his] THE JUDGE'S power and authority shall continue with
30 respect to all cases (including any motion, or other matters incidental thereto) which
31 may come before [him] THE JUDGE by virtue of such assignment until [his] THE
32 JUDGE'S action thereon shall be completed. In the absence of the Chief Judge of the
33 SUPREME Court [of Appeals], the provisions of this section shall be applicable to the
34 senior judge present in the SUPREME Court [of Appeals]. The powers of the Chief
35 Judge set forth in this section shall be subject to any rule or regulation adopted by the
36 SUPREME Court [of Appeals].

37 22.

38 Where any Term is held, or trial conducted by less than the whole number of
39 said Circuit Judges, upon the decision or determination of any point, or question, by
40 the Court, it shall be competent to the party, against whom the ruling or decision is
41 made, upon motion, to have the point, or question reserved for the consideration of

1 the three Judges of the Circuit, who shall constitute a court in banc for such purpose;
2 and the motion for such reservation shall be entered of record, during the sitting, at
3 which such decision may be made; and the several Circuit Courts shall regulate, by
4 rules, the mode and manner of presenting such points, or questions to the Court in
5 banc, and the decision of the said Court in banc shall be the effective decision in the
6 premises, and conclusive, as against the party, at whose motion said points, or
7 questions were reserved; but such decision in banc shall not preclude the right of
8 Appeal, or writ of error to the adverse party, in those cases, civil or criminal, in which
9 appeal, or writ of error to the SUPREME Court [of Appeals] may be allowed by Law.
10 The right of having questions reserved shall not, however, apply to trials of Appeals
11 from judgments of the District Court, nor to criminal cases below the grade of felony,
12 except when the punishment is confinement in the Penitentiary; and this Section
13 shall be subject to such provisions as may hereafter be made by Law.

14 41E.

15 The Chief Judge of the SUPREME Court [of Appeals] shall designate one judge
16 of the District Court as Chief Judge of that Court, to serve as Chief Judge at [his
17 pleasure] THE PLEASURE OF THE CHIEF JUDGE OF THE SUPREME COURT. The Chief
18 Judge of the District Court may assign administrative duties to other judges of the
19 District Court and shall perform such other duties in the administration of the
20 District Court as may be prescribed by rule or by law.

21 **Article V - Attorney-General and State's Attorneys**

22 6.

23 It shall be the duty of the Clerk of the SUPREME Court [of Appeals] and the
24 Clerks of any intermediate courts of appeal, respectively, whenever a case shall be
25 brought into said Courts, in which the State is a party or has interest, immediately to
26 notify the Attorney General thereof.

27 **Article XVII - Quadrennial Elections**

28 3.

29 All State and county officers elected by qualified voters (except judges of the
30 Circuit Courts, [judges of the Supreme Bench of Baltimore City,] judges of the
31 SUPREME Court [of Appeals] and judges of any intermediate courts of appeal) shall
32 hold office for terms of four years, and until their successors shall qualify.

33 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly
34 determines that the amendment to the Constitution of Maryland proposed by this Act
35 affects multiple jurisdictions and that the provisions of Article XIV, Section 1 of the
36 Constitution concerning local approval of constitutional amendments do not apply.

37 SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section
38 proposed as an amendment to the Constitution of Maryland shall be submitted to the
39 legal and qualified voters of this State at the next general election to be held in

1 November, 1998 for their adoption or rejection in pursuance of directions contained in
2 Article XIV of the Constitution of this State. At that general election, the vote on this
3 proposed amendment to the Constitution shall be by ballot, and upon each ballot
4 there shall be printed the words "For the Constitutional Amendments" and "Against
5 the Constitutional Amendments," as now provided by law. Immediately after the
6 election, all returns shall be made to the Governor of the vote for and against the
7 proposed amendment, as directed by Article XIV of the Constitution, and further
8 proceedings had in accordance with Article XIV.

9 SECTION 4. AND BE IT FURTHER ENACTED, That, subject to the approval
10 of this Act by the voters, in accordance with Section 3 of this Act, this Act shall take
11 effect January 1, 2000.