

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 167 (Senator Ruben)
Judicial Proceedings

Circuit Court Judges - Appointment and Term of Office

This bill proposes an amendment to the Maryland Constitution to alter the method of selection and tenure of circuit court judges. The bill proposes that circuit court judges be selected by gubernatorial appointment, subject to confirmation by the Senate, followed by approval or rejection by the voters in a retention election. A judge appointed by the Governor may take office before confirmation by the Senate, but must cease to hold office at the close of the next annual General Assembly session (or current session, if appointed during a session), if not confirmed during that session. The bill decreases the term of office from 15 years following election to 10 years following election.

Fiscal Summary

State Effect: None.

Local Effect: If approved by the General Assembly, this constitutional amendment will be submitted to the voters at the 2006 general election. It should not result in additional costs for the county election boards.

Small Business Effect: None.

Analysis

Bill Summary: The bill proposes that any vacancy in a circuit court judgeship be filled in the same manner in which a vacancy on the Court of Appeals or Court of Special Appeals is currently filled. 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 one year from the date of the appointment. Retention of the judge in office is subject to approval or rejection by the voters of the city or county from which the judge was appointed at that next general election, and at the general election every 10 years thereafter. The judge's name is placed on the appropriate ballot without opposition. If the voters reject the retention in office, or if the vote is tied, the office becomes vacant 10 days after certification of the election returns. If the 10-year term expires before a judge reaches the age of 70, the judge may be reappointed by the Governor, with the advice and consent of the Senate, subject to the same retention vote. The judge will be appointed for another 10 years or until reaching the age of 70.

For the purposes of implementing these changes:

- each circuit court judge already elected to office on the effective date of the bill's amendments will continue in office until the end of the elected term, or until the judge turns 70, whichever occurs first. Thereafter, continuance of the judge in office becomes subject to the appointment and election method described above; and
- each circuit court judge in office who has not been elected to that office as of the effective date of the bill's amendments 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: Following any vacancy on the circuit court, the Governor may appoint, with the advice and consent of the Senate, any person qualified to be a judge. The appointee must be (1) an attorney licensed in the State; (2) at least 30 years old; (3) a citizen of the State; (4) a qualified voter; (5) a resident of the State for at least five years; and (6) a resident of the city or county for which they are being appointed for at least six months. Following appointment, the judge must appear on the next general election ballot and be elected by the voters of the 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 office for 15 years from the time of the election, until a successor is elected and qualified, or the judge turns 70 years old, whichever comes 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.

Upon any vacancy of 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:

- where the vacancy occurs due to the expiration of a 15-year term, at the first biennial general election for Representatives in Congress following the expiration of the term; or
- where 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 70 years of age.

Background: The 2004 elections saw highly contested judicial races in Anne Arundel and Montgomery counties. The sitting judges in both of those races had been found qualified by the Judicial Nominating Commission and were selected by the Governor. Sitting judges may not affiliate with a party and appear on the ballots in both primaries. Challengers may affiliate with parties. Two of the three incumbents from Anne Arundel County were unseated in the 2004 election.

Local Fiscal Effect: The Maryland Constitution requires that proposed amendments to the constitution be publicized either: (1) in at least two newspapers in each county, if available, and in at least three newspapers in Baltimore City once a week for four weeks immediately preceding the general election; or (2) by order of the Governor in a manner provided by law. State law requires local boards of elections to publicize proposed amendments to the constitution either in newspapers or on specimen ballots; local boards of elections are responsible for the costs associated with these requirements. It is anticipated that the fiscal 2006 budgets of local election boards will contain funding for notifying qualified voters about proposed constitutional amendments for the 2006 general election in newspapers or on specimen ballots.

Additional Information

Prior Introductions: SB 647 of 2004, a similar bill, was withdrawn prior to a hearing. SB 6, SB 35, and SB 88 of 2003 were all reported unfavorably by the Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Washington County, Montgomery County, Prince George's County, Kent County, Worcester County, Judiciary (Administrative Office of the Courts), Maryland State Board of Elections, Department of Legislative Services

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ncs/jr

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