

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 390

(Delegate Zirkin, *et al.*)

Judiciary

Election of Circuit Court Judges - Nonpartisan General Elections

This bill establishes a nonpartisan method for electing a circuit court judge during a general election.

Fiscal Summary

State Effect: One-time \$5,000 increase in State expenditures for computer reprogramming and testing by the State Board of Elections (SBE).

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A candidate for election as a circuit court judge may not be nominated at a primary election and must be elected at a general election on a nonpartisan basis. The deadline for filing a certificate of candidacy for judge of a circuit court is 5:00 p.m. on the first Monday in August in the year of the general election for that office. An office will be deemed vacant when a candidate dies or otherwise becomes disqualified for office before the general election and: (1) ballots are already printed; (2) it is too late for the ballot to be reprinted; and (3) the candidate receives sufficient votes to be elected. The office will be filled as if the vacancy had occurred during the term of office.

In addition, an office shall be considered vacant if, in a multiseat election, two or more candidates tie for the last office to be filled. The Governor is required to select one of the tying candidates to fill the vacancy.

Current Law: A candidate for public office of a political party is nominated in accordance with the requirements of the Election Law Article. Circuit court judges are nominated by principal political parties during a primary election and are elected to office in a general election.

The filing deadline for candidates for offices other than delegate to the Democratic National Convention is 9:00 p.m. on the Monday that is 10 weeks or 70 days before the primary election.

Article IV of the Maryland Constitution provides that vacancies in the office of a circuit court judge be filled by gubernatorial appointment until the election and qualification of a successor at the first general election one year after the occurrence of the vacancy. Vacancies created by the expiration of a judge's 15-year term are to be filled by a successor that is elected at the first biennial general election for Representatives in Congress.

The names of candidates for judge of the circuit court appear on all primary election ballots (the ballots of all parties participating in the primary). They may also be nominated by petition. Their names appear on general election ballots without a party label or other distinguishing mark or location that might indicate party affiliation.

Background: Circuit court judges are currently nominated by the two principal political parties during the primary election. Because Maryland holds closed primaries, in which only members of a particular political party may vote for that party's candidates for nomination, candidates for circuit court judge register their candidacies with both parties so as to appear on the ballots of both principal political parties during the primary. The practice of "cross-filing" candidacies dates back to 1941.

After the presidential primary in March 2004, a suit was filed in St. Mary's County circuit court requesting an injunction to prevent SBE from certifying the primary results of circuit court judge candidates on the grounds that unaffiliated voters, who are generally not permitted to vote in party nominating elections (the primary), are unconstitutionally disenfranchised from participating in the initial selection process for circuit court judges. Following a ruling by the trial court, the case, *Suessman v. Lamone*, 383 Md. 697 (2004), was appealed to the Court of Appeals. The court held that there is a legitimate State interest in keeping partisanship out of judicial elections, while holding on to the party primary system. The court held that the "State's attempts to achieve this goal

do not violate the equal protection provisions of either the Maryland or Federal Constitutions simply because some voters who decline to join a political party nevertheless wish to vote in that party's primary.”

Additional Information

Prior Introductions: HB 1544 of 2004, an identical bill, was re-referred to the House Judiciary Committee, but was later withdrawn.

Cross File: None.

Information Source(s): Montgomery County, Caroline County, Judiciary (Administrative Office of the Courts), Maryland State Board of Elections, Department of Legislative Services

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ncs/jr

Analysis by: Amy A. Devadas

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