

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 393
Judiciary

(Delegate Zirkin, *et al.*)

Election of Circuit Court Judges - Nonpartisan Elections

This bill provides for nonpartisan elections of circuit court judges. The bill provides that any registered voter of a county, regardless of party affiliation or lack of party affiliation, is eligible to vote in a primary election for circuit court judges of that county. The bill prohibits an individual from qualifying as a circuit court judge by filing a petition.

Fiscal Summary

State Effect: One-time \$30,000 increase in State expenditures for computer reprogramming and testing by the State Board of Elections (SBE). This is mainly the result of the reprogramming required to calculate potential winners of circuit court primaries (at least 50% of the vote) according to the provisions of this bill.

Local Effect: Increase in local expenditures for local boards of election to print paper primary ballots and voter authority cards for voters not affiliated with the two principal political parties who can vote in primary elections for circuit court judges under this bill.

Small Business Effect: None.

Analysis

Bill Summary: Circuit court judge candidates shall, without party designation or regard to party affiliation: (1) file certificates of candidacy; (2) be certified to the ballot; (3) appear on the ballot; (4) be voted on; and (5) be nominated and be elected.

The bill requires primary elections for circuit court judges unless the number of candidates does not exceed the number of offices to be filled. If this should occur, all of the candidates will be certified as nominees.

If a candidate dies or becomes disqualified before the ballots are printed, but in time for a reprinting of the ballots, the candidate's name may not appear on the ballot. If this occurs after the ballots are printed and too late for the ballots to be reprinted, any votes for the candidate may not be counted.

If a circuit court judge candidate receives more than 50% of the vote in a primary, the candidate shall be elected as judge, and will appear on the general election ballot as having been elected during a primary election. The candidates, equal in number to twice the number of offices remaining to be filled in the general election, who receive the largest number of votes in the primary election shall be the nominated candidates. If two or more candidates receive the lowest number of votes necessary to be a nominated candidate, creating a tie, both candidates will appear as nominated candidates on the general election ballot.

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.”

Local Expenditures: This bill requires nonpartisan elections for circuit court judges. Local school board elections are the only nonpartisan elections in Maryland. Therefore, jurisdictions that appoint school boards do not hold any nonpartisan primary elections. Currently, seven jurisdictions have appointed boards of education. This number does not include jurisdictions in the process of converting to elected boards of education. These jurisdictions would have to print paper primary ballots for absentee and provisional voters who do not belong to the two principal political parties. Paper ballots cost \$0.45 per ballot. Local boards of election would also have to print voter authority cards for unaffiliated and nonprincipal political party voters.

SBE advises that a fair amount of school board elections do not require a primary election because the number of candidates is less than or equal to twice the number of available school board vacancies. Therefore, even jurisdictions that elect school boards could incur the expenses mentioned above. There are not sufficient data at this time to reliably estimate the costs associated with the paper ballots and voter authority cards.

As of September 2005, 480,402 voters in Maryland were not registered with the two principal political parties. Of this group, 174,987 were registered in jurisdictions with appointed school boards.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Somerset County, Montgomery County, Prince George's County, Charles County, Judiciary (Administrative Office of the Courts), Maryland State Board of Elections, Baltimore County, Frederick County, Department of Legislative Services

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