

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 84

(Delegate Smigiel)

Judiciary

Judicial Proceedings

Court of Special Appeals - Right of Appeal from Circuit Court In Banc

This constitutional amendment provides a direct appeal to the Court of Special Appeals following an in banc hearing at the circuit court level to the party who did not request the in banc review. The bill also provides that three judges comprise a circuit court in banc and that the procedure for appeals to the circuit court in banc be determined by the Maryland Rules and not the circuit court itself.

Fiscal Summary

State Effect: The bill's changes could be handled with existing budgeted resources, since parties traditionally appeal adverse decisions in circuit court cases by directly appealing to the Court of Special Appeals rather than a circuit court in banc.

Local 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 FY 2007 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.

Small Business Effect: None.

Analysis

Bill Summary: This constitutional amendment establishes the right of a party who did not request a review by a circuit court in banc to a direct appeal to the Court of Special Appeals from an adverse decision by the in banc court. The bill provides that a party in a circuit court trial conducted by less than three circuit court judges is eligible for an in banc review. The bill establishes that three judges of a circuit court constitute a circuit court in banc. This bill also repeals the authority of the circuit courts to regulate the rules governing the procedure for appeals to the circuit court in banc, and establishes that the Maryland Rules are to provide the procedure for appeals to the circuit court in banc. This bill eliminates obsolete language pertaining to writs of error from this provision of the Constitution.

Current Law: In general, Article IV, § 22, of the Maryland Constitution allows a party in a circuit court trial conducted by less than all the judges of the court to have a judgment or determination of any point or question reviewed by a circuit court in banc. The party requesting the in banc review must make a timely motion to do so. The decision of the court in banc is considered final and conclusive against the party who requested the in banc review. However, the party who did not request the in banc review can appeal the in banc court's decision to the Court of Appeals. Because the Court of Appeals hears cases via certiorari, this appeal is discretionary, not direct.

Article IV, § 22 does not apply to: (1) circuit court trials that are appeals from judgments of the District Court; or (2) misdemeanors not punishable by confinement in the penitentiary.

Background: In *Bienkowski v. Brooks*, 386 Md. 516 (2005), the Court of Appeals held that the Court of Appeals, not the Court of Special Appeals, has jurisdiction over appeals from decisions by in banc circuit courts. Therefore, if the party who did not request the review by the circuit court in banc wishes to appeal the in banc court's decision, they must do so by petitioning the Court of Appeals for a writ of certiorari.

The court mentioned that Article IV, § 22, first appeared in the Maryland Constitution of 1867. This provision was proposed at the 1867 Convention with the idea that a review by an in banc circuit court was an opportunity for the common man to appeal a decision by the circuit court without incurring the expense of an appeal and travel to Annapolis. Reducing State expenditures associated with large number of appeals to the Court of Appeals was another motivating factor.

Factors included in the court's reasoning are listed below.

- The plain language of the statute reads “the Court of Appeals,” not “the Court of Special Appeals.” Also, the Court of Appeals was created in the eighteenth century, and the Court of Special Appeals did not exist until 1966, well after the 1867 adoption of Article IV, § 22.
- When the Court of Special Appeals was created, several statutory provisions had to be revised in order to account for its creation. Article IV, § 22 was left untouched in 1966. The 1978 amendment substituting “the District Court” for “Justices of the Peace” in Article IV, § 22 still did not substitute “Court of Special Appeals” for “Court of Appeals.”
- The Maryland judicial system normally provides one direct appeal. Allowing the Court of Special Appeals to hear appeals from in banc circuit court decisions “...would be authorizing two levels of direct appeals, one by either party in the circuit court to the court in banc and one by the appellee in the court in banc to the Court of Special Appeals.”
- Though Rule 2-551 specifically states that appeals of decisions by circuit courts in banc go to the Court of Special Appeals, this is not directly stated in any statute and the Court of Appeals does not have the rule-making authority to change the subject matter jurisdiction of courts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), *Bienkowski v. Brooks*, 386 Md. 516 (2005), Department of Legislative Services

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ncs/jr

Analysis by: Amy A. Devadas

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