

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 309 (Senators Stone and Giannetti)
(Committee to Revise Article 27 – Crimes and Punishments)

Judicial Proceedings

Constitutional Amendment - Bribery of a Public Official - Immunity

This bill proposes an amendment to the Maryland Constitution that provides that any person who bribes, attempts to bribe, demands, or receives a bribe, fee, reward, or testimonial may be compelled to testify against another person who may have committed those same offenses. However, no information directly or indirectly derived from the person compelled to testify may be used against that person in any criminal case, except in a prosecution for perjury, obstruction of justice, or failing to comply with the order to testify.

This proposed amendment would also make application of Article III, Section 50 of the Maryland Constitution gender-neutral.

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

Current Law: The Maryland Constitution requires the General Assembly to provide by law for a fine and/or imprisonment in the penitentiary for any person who bribes, or

attempts to bribe any executive or judicial officer of the State, any member or officer of the General Assembly, or any member, officer or executive officer of any municipal corporation within the State to influence the member or officer in the performance of his or her official duties. The General Assembly must also provide by law for a fine and/or imprisonment in the penitentiary for any of the aforementioned members or officials who demand or receive a bribe, fee, reward, or testimonial to influence the performance or the neglect or failure to perform his or her duties.

The General Assembly is required to provide by law for compelling the testimony of any person who bribes or attempts to bribe, demands, or receives a bribe against any person who may have committed the same offenses. However, the person who is compelled to testify under these circumstances is immune from prosecution for the crime about which the person was compelled to testify.

A person convicted of bribery may not vote or hold an office of trust or profit in the State. Because the Maryland Constitution specifies confinement in a penitentiary as punishment for bribery, a person convicted of this offense may reserve a point or question for *in banc* review. In an *in banc* review, the Administrative Judge of the circuit designates three judges from that circuit, excluding the judge who tried the action, to hear a contested point or question raised by the defendant.

Background: This bill incorporates recommendations from the Committee to Revise Article 27 of the Annotated Code of Maryland – Crimes and Punishments and includes recommendations from the former Criminal Law Article Review Committee.

The Committee to Revise Article 27 recommended this constitutional amendment because of a concern that the current constitutional and statutory provisions on compelling testimony and providing immunity under the bribery offense are not consistent with the right against self-incrimination provided in the U.S. Constitution:

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that [§9-201(f) of the Criminal Law Article] which allows a witness to be compelled to testify and provides transactional immunity for that testimony raises significant constitutional concerns under the 5th and 14th Amendments to the U.S. Constitution, and their State counterpart, Art. 22 of the Maryland Declaration of Rights...The relevant constitutional provisions generally prohibit self-incrimination. The granting of some form of immunity against prosecution does not, of itself, cure the constitutional defect... The General Assembly may wish to explore the scope of immunity that may be required to allow compelled testimony in harmony with federal and State constitutional precedent (*Revisor's Note to § 9-201 of the Criminal Law Article*)

The passage of SB 307/HB 383 of 2006 is contingent upon the adoption of this proposed amendment. Either of these bills would amend § 9-201 of the Criminal Law Article to clarify the circumstances under which a witness involved in a bribery offense may be compelled to testify and receive transactional immunity consistent with the proposed constitutional amendment.

The former Criminal Law Article Review Committee, which was charged with the nonsubstantive revision of the State's criminal law, identified various provisions that appeared to require substantive changes to the existing law. Based on these provisions of the article review committee identified by "flags" or questions to the General Assembly, the Article 27 committee recommends a series of substantive, yet largely clarifying changes to definitions in provisions dealing with bribery of public officials, as well as identity fraud, and extortion by government officers and employees.

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 fiscal 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.

Additional Information

Prior Introductions: None.

Cross File: HB 380 (Delegate Vallario) (Committee to Revise Article 27 – Crimes and Punishments) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Office of State's Attorneys, Department of Legislative Services

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ncs/jr

Analysis by: Karen D. Morgan

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