

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 290
Judiciary

(Delegate Cardin, *et al.*)

Election Law - Circuit Court Judges - Retention Elections

This constitutional amendment alters provisions relating to the election and tenure of circuit court judges. Upon a vacancy in the office of a judge for any reason, the Governor appoints a new circuit court judge, who must receive a positive recommendation from a Judicial Recommendation Committee. An election is held to fill this vacancy at the next general election one year after the vacancy occurred. The judge is subsequently subject to a retention election, without opposition, 15 years after the first election, and every 10 years thereafter, as specified in the bill. The bill also makes provisions for judges currently serving elected terms.

Fiscal Summary

State Effect: Any computer reprogramming costs for the State Board of Elections to accommodate the changes to circuit court judicial elections could be handled with existing resources. The Judiciary could also handle the effects of this bill with existing resources.

Local Effect: The changes could be handled with existing resources of the local boards of election.

Small Business Effect: None.

Analysis

Bill Summary: This constitutional amendment provides that upon a vacancy in a circuit court, the Governor must appoint an individual who is qualified to fill the office, and who

has a positive recommendation from the Judicial Recommendation Committee established by the bill. The committee is composed of at least 10 anonymous circuit court judges appointed by the Chief Judge of the Court of Appeals.

The appointee holds office until the next general election at least one year after the occurrence of the vacancy, at which time an election is held to elect a successor. (It is unclear from the bill whether this first election would be a contested election.) Retention in office of a circuit court judge is subject to confirmation by the voters of the county 15 years after the first election, and every 10 years thereafter. This retention election is a “yes-or-no” vote where the judge’s name is listed on the ballot without opposition. In this retention election, if the judge fails to secure at least 20% of the votes of the registered voters in the county, or the vote is tied, the office becomes vacant 10 days after the certification of the election.

The bill retains the mandatory retirement age for judges at 70 years, and the General Assembly’s power to remove a judge by reason of sickness or disability by a two-thirds vote with approval from the Governor. The bill also clarifies that a member of the General Assembly is not disqualified from judicial appointment solely because of membership in a General Assembly that proposed or enacted any constitutional amendment or statute affecting the method of selection, continuance in office, removal, or retirement of a judge, the abolition or creation of a court, a decrease or increase in the number of judges of any court, or a change in the salary or allowances of any judge.

Any circuit court judge who is in office for an elected term on the effective date of this amendment shall continue in office until the end of the elected term or the judge reaches age 70.

Current Law: Circuit court judges are the only judges in Maryland subject to contested elections. Judges of the circuit courts are elected at the general election by the qualified voters of the respective 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 the office for 15 years from the time of election, and until either a successor is elected and qualified, or the judge turns 70 years old, whichever occurs 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 in 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.

A person cannot be deemed ineligible for judicial appointment or judicial election solely because the person was a member of a General Assembly at a time when the number or salary of judges was increased or decreased.

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 2009 budgets of local election boards will contain funding for notifying qualified voters about proposed constitutional amendments for the 2008 general election in newspapers or on specimen ballots.

Additional Information

Prior Introductions: SB 209 of 2006, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. The bill was cross filed as HB 385, where it received a hearing in the House Judiciary Committee, but was withdrawn.

Cross File: None.

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

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