

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE

Senate Bill 46 (Senator Dyson, *et al.*)

Education, Health, and Environmental Affairs

Judiciary

Election of Circuit Court Judges - Nonpartisan Elections

This bill establishes new procedures for the nonpartisan nomination and election of circuit court judges.

Fiscal Summary

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

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	5,000	0	0	0	0
Net Effect	(\$5,000)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Increase in local expenditures for local boards of election to print paper primary ballots 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: Candidates for election to the circuit court shall, without party designation or regard to party affiliation:

- file certificates of candidacy;

- be certified to the ballot;
- appear on the ballot;
- be voted on; and
- be nominated and elected.

Circuit court judges are nominated at the primary election. Any voter, regardless of party affiliation or lack thereof, is eligible to vote for the number of candidates for which there are offices to be filled.

The candidates, equal in number to twice the number of offices to be filled, who receive the largest number of votes in the primary election shall be the nominated candidates. In a general election, a voter may vote for a number of nominees equal to the number of judges to be elected in that county's election. The nominees, equal in number to the number of offices to be filled, who receive the largest number of votes in the general election, shall be declared elected.

If two candidates tie for the last nomination, both names appear on the general election ballot. If two candidates tie for the last judgeship in the general election, the office is considered vacant. The vacancy is filled as if it had occurred during the term of office, with the choice limited to one of the two candidates.

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.

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 generally are 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 local 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, at a cost of \$0.45 per ballot.

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.

As of December 2006, 504,503 voters in Maryland were not registered with the two principal political parties. Of this group, 188,162 were registered in jurisdictions with appointed boards of education.

Additional Information

Prior Introductions: SB 324 of 2006, an identical bill, was adopted by the Senate. SB 145 of 2006, a similar bill cross filed as HB 384, received an unfavorable report by the Senate Education, Health, and Environmental Affairs Committee, and was withdrawn from the House. HB 466 of 2003, an identical bill, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

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

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ncs/jr

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