

HOUSE BILL 1385

D1

CONSTITUTIONAL AMENDMENT

0lr3318
CF SB 833

By: **Delegate Cardin**

Introduced and read first time: February 18, 2010

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Circuit Court Judges – Election, Qualifications, and Term of Office**

3 FOR the purpose of proposing an amendment to the Maryland Constitution relating to
4 the selection and tenure of circuit court judges; altering the method of filling
5 vacancies in the office of a judge of a circuit court; providing for retention
6 elections following an appointment to fill a vacancy in the office of a judge of a
7 circuit court; altering the term of office of circuit court judges; altering certain
8 qualifications for appointment of circuit court judges; providing for a
9 transitional period during which the terms of certain amendments are effective;
10 repealing certain obsolete provisions; making stylistic changes; generally
11 relating to the selection, election, appointment, qualification, tenure, and term
12 of office for judges of the circuit courts; and submitting this amendment to the
13 qualified voters of the State of Maryland for their adoption or rejection.

14 BY proposing an amendment to the Maryland Constitution
15 Article IV – Judiciary Department
16 Section 2, 3, 5A, 11, and 21(a)

17 BY proposing a repeal of the Maryland Constitution
18 Article IV – Judiciary Department
19 Section 5; 18B and the part “Part IIA – Interim Provisions”; and 21A

20 BY proposing an addition to the Maryland Constitution
21 Article XVIII – Provisions of Limited Duration
22 Section 6

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, (Three-fifths of all the members elected to each of the two Houses
25 concurring), That it be proposed that the Maryland Constitution read as follows:

26 **Article IV – Judiciary Department**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 2.

2 The Judges of all of the said Courts shall be citizens of the State of Maryland,
3 and qualified voters under this Constitution, and shall have resided therein not less
4 than five years, and not less than six months next preceding their [election, or]
5 appointment[, as the case may be,] in the city, county, district, judicial circuit,
6 intermediate appellate judicial circuit or appellate judicial circuit for which they may
7 be[, respectively, elected or] appointed. They shall be not less than thirty years of age
8 at the time of their [election or] appointment, and shall be selected from those who
9 have been admitted to practice law in this State, and who are most distinguished for
10 integrity, wisdom and sound legal knowledge.

11 3.

12 [Except for the Judges of the District Court, the Judges of the several Courts
13 other than the Court of Appeals or any intermediate courts of appeal shall, subject to
14 the provisions of Section 5 of this Article of the Constitution, be elected in Baltimore
15 City and in each county, by the qualified voters of the city and of each county,
16 respectively, all of the said Judges to be elected at the general election to be held on
17 the Tuesday after the first Monday in November, as now provided for in the
18 Constitution. Each of the said Judges shall hold his office for the term of fifteen years
19 from the time of his election, and until his successor is elected and qualified, or until
20 he shall have attained the age of seventy years, whichever may first happen, and be
21 reeligible thereto until he shall have attained the age of seventy years, and not after.]
22 In case of the inability of any [of said Judges] **CIRCUIT COURT JUDGE** to discharge
23 [his] **THE JUDGE'S** duties with efficiency, by reason of continued sickness, or of
24 physical or mental infirmity, it shall be in the power of the General Assembly,
25 two-thirds of the members of each House concurring, with the approval of the
26 Governor to retire said Judge from office.

27 [5.

28 Upon every occurrence or recurrence of a vacancy through death, resignation,
29 removal, disqualification by reason of age or otherwise, or expiration of the term of
30 fifteen years of any judge of a circuit court, or creation of the office of any such judge,
31 or in any other way, the Governor shall appoint a person duly qualified to fill said
32 office, who shall hold the same until the election and qualification of his successor. His
33 successor shall be elected at the first biennial general election for Representatives in
34 Congress after the expiration of the term of fifteen years (if the vacancy occurred in
35 that way) or the first such general election after one year after the occurrence of the
36 vacancy in any other way than through expiration of such term. Except in case of
37 reappointment of a judge upon expiration of his term of fifteen years, no person shall
38 be appointed who will become disqualified by reason of age and thereby unable to
39 continue to hold office until the prescribed time when his successor would have been
40 elected.]

1 [5A.] 5.

2 (a) A vacancy in the office of a judge of **A CIRCUIT COURT OR** an appellate
3 court, whether occasioned by the death, resignation, removal, retirement,
4 disqualification by reason of age, or rejection by the voters of an incumbent, the
5 creation of the office of a judge, or otherwise, shall be filled as provided in this section.

6 (b) Upon the occurrence of a vacancy the Governor shall appoint, by and with
7 the advice and consent of the Senate, a person duly qualified to fill [said office] **THE**
8 **VACANCY** who shall hold the [same] **OFFICE** until the election for continuance in
9 office as provided in subsections (c) [and], (d), **AND (E) OF THIS SECTION.**

10 (c) The continuance in office of a judge of the Court of Appeals, **FOLLOWING**
11 **AN APPOINTMENT TO FILL A VACANCY**, is subject to approval or rejection by the
12 registered voters of the appellate judicial circuit from which [he] **THE JUDGE** was
13 appointed at the next general election following the expiration of [one] **1** year from the
14 date of the occurrence of the vacancy which [he] **THE JUDGE** was appointed to fill, and
15 at the general election next occurring every [ten] **10** years thereafter.

16 (d) The continuance in office of a judge of the Court of Special Appeals,
17 **FOLLOWING AN APPOINTMENT TO FILL A VACANCY**, is subject to approval or
18 rejection by the registered voters of the geographical area prescribed by law at the
19 next general election following the expiration of [one] **1** year from the date of the
20 occurrence of the vacancy which [he] **THE JUDGE** was appointed to fill, and at the
21 general election next occurring every [ten] **10** years thereafter.

22 **(E) THE CONTINUANCE IN OFFICE OF A JUDGE OF A CIRCUIT COURT,**
23 **FOLLOWING AN APPOINTMENT TO FILL A VACANCY, IS SUBJECT TO APPROVAL**
24 **OR REJECTION BY THE REGISTERED VOTERS OF BALTIMORE CITY OR THE**
25 **COUNTY FROM WHICH THE JUDGE WAS APPOINTED AT THE NEXT GENERAL**
26 **ELECTION FOLLOWING THE EXPIRATION OF 1 YEAR FROM THE DATE OF THE**
27 **OCCURRENCE OF THE VACANCY THAT THE JUDGE WAS APPOINTED TO FILL, AND**
28 **AT THE GENERAL ELECTION NEXT OCCURRING EVERY 10 YEARS THEREAFTER.**

29 [(e)] **(F)** The approval or rejection by the registered voters of a judge as
30 provided for in subsections (c) [and], (d), **AND (E) OF THIS SECTION** shall be a vote
31 for the judge's retention in office for a term of [ten] **10** years or [his] **THE JUDGE'S**
32 removal. The judge's name shall be on the appropriate ballot, without opposition, and
33 the voters shall vote yes or no for [his] **THE JUDGE'S** retention in office. If the voters
34 reject the retention in office of a judge, or if the vote is tied, the office becomes vacant
35 [ten] **10** days after certification of the election returns.

36 [(f)] **(G)** An appellate **OR CIRCUIT** court judge shall retire when [he] **THE**
37 **JUDGE** attains [his seventieth birthday] **THE AGE OF 70 YEARS.**

1 **[(g) (H)** A member of the General Assembly who is otherwise qualified for
 2 appointment to judicial office is not disqualified by reason of his membership in a
 3 General Assembly which proposed or enacted any constitutional amendment or
 4 statute affecting the method of selection[. Continuance], **CONTINUANCE** in office, or
 5 retirement or removal of a judge, the creation or abolition of a court, an increase or
 6 decrease in the number of judges of any court, or an increase or decrease in the salary,
 7 **[pension] PENSION**, or other allowances of any judge.

8 11.

9 The election for Judges, hereinbefore provided, and all elections for Clerks,
 10 Registers of Wills, and other officers, provided in this Constitution, except State's
 11 Attorneys, shall be certified, and the returns made, by the Clerks of the Circuit Courts
 12 **[of the Counties, and the Clerk of the Superior Court of Baltimore City, respectively,]**
 13 to the Governor, who shall issue commissions to the different persons for the offices to
 14 which they shall have been, respectively, elected; and in all such elections for officers
 15 other than judges of an appellate **OR CIRCUIT** court, the person having the greatest
 16 number of votes, shall be declared to be elected.

17 **[Part IIA – Interim Provisions]**

18 **[18B.**

19 (a) For the purpose of implementing the amendments to this article, dealing
 20 with the selection and tenure of appellate court judges, the following provisions shall
 21 govern.

22 (b) Each judge of an appellate court who is in office for an elected term on
 23 the effective date of these amendments, unless he dies, resigns, retires, or is otherwise
 24 lawfully removed, shall continue in office until the general election next after the end
 25 of his elected term, or until his seventieth birthday, whichever first occurs. His
 26 continuance in office is then subject to the provisions of section 5A(c) and (d) of this
 27 article, applicable to judges of that court, but in no event shall any judge continue in
 28 office after his seventieth birthday.

29 (c) Each judge of a court specified in subsection (b) who is in office on the
 30 effective date of these amendments, but who has not been elected to that office by the
 31 voters, shall, within fifteen days after the effective date of these amendments, be
 32 reappointed to that office. His continuance in office is then subject to the provisions of
 33 section 5A(c) and (d) of this article, applicable to judges of that court, but in no event
 34 shall any judge continue in office after his seventieth birthday.]

35 21.

36 (a) Subject to the provisions of subsection (b) the General Assembly shall
 37 determine by law the number of judges of the circuit court in **BALTIMORE CITY AND**

1 each county and circuit. These judges shall be selected in accordance with [Sections 3
2 and 5] **PART II** of this Article.

3 [21A.

4 If the amendments to sections 3 and 21 of Article IV proposed by House Bill
5 972, Senate Bill 390 (1976) and the amendments to those sections proposed by House
6 Bill 1048 (1976) are ratified by the voters at the election in November 1976, the
7 amendments to those sections proposed in House Bill 972, Senate Bill 390 (1976) shall
8 take effect.]

9 **Article XVIII – Provisions of Limited Duration**

10 **6.**

11 **(A) FOR THE PURPOSE OF IMPLEMENTING THE AMENDMENTS TO**
12 **ARTICLE IV OF THE MARYLAND CONSTITUTION PROPOSED BY SENATE BILL**
13 **_____ OF 2010 (0LR2065) CONCERNING JUDGES OF THE CIRCUIT COURTS, THE**
14 **FOLLOWING PROVISIONS SHALL GOVERN. IN ACCORDANCE WITH ARTICLE XIV,**
15 **SECTION 1A OF THE MARYLAND CONSTITUTION, THIS SECTION SHALL EXPIRE**
16 **WHEN ALL OF THE JUDGES OF THE CIRCUIT COURTS HAVE COMPLETED ALL OF**
17 **THE TERMS FOR WHICH THE JUDGES ARE RETAINED IN OFFICE UNDER**
18 **SUBSECTIONS (B) AND (C) OF THIS SECTION OR HAVE VACATED THEIR OFFICES**
19 **FOR ANY REASON.**

20 **(B) EACH JUDGE OF A CIRCUIT COURT WHO IS IN OFFICE FOR AN**
21 **ELECTED TERM ON THE EFFECTIVE DATE OF THESE AMENDMENTS, UNLESS THE**
22 **JUDGE DIES, RESIGNS, RETIRES, OR IS OTHERWISE LAWFULLY REMOVED, SHALL**
23 **CONTINUE IN OFFICE UNTIL THE NEXT GENERAL ELECTION AFTER THE END OF**
24 **THE ELECTED TERM OR UNTIL THE JUDGE ATTAINS THE AGE OF 70 YEARS,**
25 **WHICHEVER OCCURS FIRST. CONTINUANCE OF THE JUDGE IN OFFICE IS THEN**
26 **SUBJECT TO THE PROVISIONS OF ARTICLE IV, SECTION 5 OF THE MARYLAND**
27 **CONSTITUTION, BUT IN NO EVENT SHALL ANY JUDGE CONTINUE IN OFFICE**
28 **AFTER ATTAINING THE AGE OF 70 YEARS.**

29 **(C) EACH JUDGE OF A CIRCUIT COURT WHO IS IN OFFICE ON THE**
30 **EFFECTIVE DATE OF THESE AMENDMENTS, BUT WHO HAS NOT BEEN ELECTED**
31 **TO THAT OFFICE BY THE VOTERS, SHALL, WITHIN 15 DAYS AFTER THE**
32 **EFFECTIVE DATE OF THESE AMENDMENTS, BE REAPPOINTED TO THAT OFFICE.**
33 **CONTINUANCE OF THE JUDGE IN OFFICE IS THEN SUBJECT TO THE PROVISIONS**
34 **OF ARTICLE IV, SECTION 5 OF THE MARYLAND CONSTITUTION, BUT IN NO**
35 **EVENT SHALL ANY JUDGE CONTINUE IN OFFICE AFTER ATTAINING THE AGE OF**
36 **70 YEARS.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly
2 determines that the amendment to the Maryland Constitution proposed by this Act
3 affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the
4 Maryland Constitution concerning local approval of constitutional amendments do not
5 apply.

6 SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section
7 proposed as an amendment to the Maryland Constitution shall be submitted to the
8 legal and qualified voters of this State at the next general election to be held in
9 November, 2010 for their adoption or rejection pursuant to Article XIV of the
10 Maryland Constitution. At that general election, the vote on this proposed amendment
11 to the Constitution shall be by ballot, and upon each ballot there shall be printed the
12 words "For the Constitutional Amendment" and "Against the Constitutional
13 Amendment," as now provided by law. Immediately after the election, all returns shall
14 be made to the Governor of the vote for and against the proposed amendment, as
15 directed by Article XIV of the Maryland Constitution, and further proceedings had in
16 accordance with Article XIV.