

HOUSE BILL 309

D1
HB 1275/08 – JUD

CONSTITUTIONAL AMENDMENT

1lr1642

By: **Delegate Frush**

Introduced and read first time: February 2, 2011

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Circuit Court Judges – Election 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; providing for a
8 transitional period under which the terms of certain amendments are to become
9 effective; making stylistic changes; generally relating to the selection, election,
10 appointment, tenure, and term of office for judges of the circuit courts; and
11 submitting this amendment to the qualified voters of the State for their
12 adoption or rejection.

13 BY proposing an amendment to the Maryland Constitution
14 Article IV – Judiciary Department
15 Section 3, 5, 5A, and 11

16 BY proposing an addition to the Maryland Constitution
17 Article XVIII – Provisions of Limited Duration
18 Section 6

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

22 **Article IV – Judiciary Department**

23 3.

24 [Except for the Judges of the District Court, the Judges of the several Courts
25 other than the Court of Appeals or any intermediate courts of appeal shall, subject to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 the provisions of Section 5 of this Article of the Constitution, be elected in Baltimore
2 City and in each county, by the qualified voters of the city and of each county,
3 respectively, all of the said Judges to be elected at the general election to be held on
4 the Tuesday after the first Monday in November, as now provided for in the
5 Constitution. Each of the said Judges shall hold his office for the term of fifteen years
6 from the time of his election, and until his successor is elected and qualified, or until
7 he shall have attained the age of seventy years, whichever may first happen, and be
8 reeligible thereto until he shall have attained the age of seventy years, and not after.]
9 In case of the inability of any [of said Judges] **CIRCUIT COURT JUDGE** to discharge
10 [his] **THE JUDGE'S** duties with efficiency, by reason of continued sickness, or of
11 physical or mental infirmity, it shall be in the power of the General Assembly,
12 two-thirds of the members of each House concurring, with the approval of the
13 Governor to retire said [Judge] **JUDGE** from office.

14 5.

15 [Upon every occurrence or recurrence of a vacancy through death, resignation,
16 removal, disqualification by reason of age or otherwise, or expiration of the term of
17 fifteen years of any judge of a circuit court, or creation of the office of any such judge,
18 or in any other way, the Governor shall appoint a person duly qualified to fill said
19 office, who shall hold the same until the election and qualification of his successor. His
20 successor shall be elected at the first biennial general election for Representatives in
21 Congress after the expiration of the term of fifteen years (if the vacancy occurred in
22 that way) or the first such general election after one year after the occurrence of the
23 vacancy in any other way than through expiration of such term.] Except in case of
24 reappointment of a judge, **SUBJECT TO THE PROVISIONS OF THIS ARTICLE**, upon
25 expiration of [his] **THE JUDGE'S** term [of fifteen years], no person shall be appointed
26 who will become disqualified by reason of age and thereby unable to continue to hold
27 office until the prescribed time when [his] **THE JUDGE'S** successor would have been
28 elected.

29 5A.

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

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

38 (c) The continuance in office of a judge of the Court of Appeals, **FOLLOWING**
39 **AN APPOINTMENT TO FILL A VACANCY**, is subject to approval or rejection by the
40 registered voters of the appellate judicial circuit from which [he] **THE JUDGE** was

1 appointed at the next general election following the expiration of [one] 1 year from the
2 date of the occurrence of the vacancy which [he] **THE JUDGE** was appointed to fill, and
3 at the general election next occurring every [ten] 10 years thereafter.

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

10 (E) **THE CONTINUANCE IN OFFICE OF A JUDGE OF A CIRCUIT COURT,**
11 **FOLLOWING AN APPOINTMENT TO FILL A VACANCY, IS SUBJECT TO APPROVAL**
12 **OR REJECTION BY THE REGISTERED VOTERS OF THE CITY OR COUNTY FROM**
13 **WHICH THE JUDGE WAS APPOINTED AT THE NEXT GENERAL ELECTION**
14 **FOLLOWING THE EXPIRATION OF 1 YEAR FROM THE DATE OF THE OCCURRENCE**
15 **OF THE VACANCY THAT THE JUDGE WAS APPOINTED TO FILL, AND AT THE**
16 **GENERAL ELECTION NEXT OCCURRING EVERY 10 YEARS THEREAFTER.**

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

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

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

33 11.

34 The election for [Judges] **JUDGES**, hereinbefore provided, and all elections for
35 Clerks, Registers of Wills, and other officers, provided in this Constitution, except
36 State's Attorneys, shall be certified, and the returns made, by the Clerks of the Circuit
37 Courts of the Counties, and the Clerk of the Superior Court of Baltimore City,
38 respectively, to the Governor, who shall issue commissions to the different persons for

1 the offices to which they shall have been, respectively, elected; and in all such elections
2 for officers other than judges of an appellate OR CIRCUIT court, the person having the
3 greatest number of votes, shall be declared to be elected.

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

5 **6.**

6 (A) FOR THE PURPOSE OF IMPLEMENTING THE AMENDMENTS TO
7 ARTICLE IV OF THE MARYLAND CONSTITUTION PROPOSED BY HOUSE BILL
8 _____ OF 2011 (1LR1642) CONCERNING THE SELECTION AND TENURE OF
9 CIRCUIT COURT JUDGES, THE FOLLOWING PROVISIONS SHALL GOVERN. IN
10 ACCORDANCE WITH ARTICLE XIV, SECTION 1A OF THE MARYLAND
11 CONSTITUTION, THIS SECTION SHALL EXPIRE WHEN ALL OF THE JUDGES OF
12 THE CIRCUIT COURTS HAVE COMPLETED ALL OF THE TERMS FOR WHICH THE
13 JUDGES ARE RETAINED IN OFFICE UNDER SUBSECTIONS (B) AND (C) OF THIS
14 SECTION OR HAVE VACATED THEIR OFFICES FOR ANY REASON.

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

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

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

37 SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section
38 proposed as an amendment to the Maryland Constitution shall be submitted to the

1 qualified voters of the State at the next general election to be held in November, 2012
2 for their adoption or rejection pursuant to Article XIV of the Maryland Constitution.
3 At that general election, the vote on this proposed amendment to the Constitution
4 shall be by ballot, and upon each ballot there shall be printed the words “For the
5 Constitutional Amendment” and “Against the Constitutional Amendment,” as now
6 provided by law. Immediately after the election, all returns shall be made to the
7 Governor of the vote for and against the proposed amendment, as directed by Article
8 XIV of the Maryland Constitution, and further proceedings had in accordance with
9 Article XIV.