

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1061
Judiciary

(Delegate Hough, *et al.*)

Judiciary Department - Commission on Judicial Disabilities - Powers

This constitutional amendment expands the reasons for which a judge may be removed from office by requiring the Commission on Judicial Disabilities to remove a judge on a finding that the judge engaged in specified misconduct.

Fiscal Summary

State Effect: Potential minimal general fund expenditure increase for the Judiciary, if the proposed constitutional amendment is approved by Maryland voters at the November 2012 general election, to reflect the additional workload for the Commission on Judicial Disabilities.

Local Effect: None. It is assumed that the potential for increased costs to notify voters of any constitutional amendments proposed by the General Assembly, and to include any proposed constitutional amendments on the ballot at the next general election, will have been anticipated in local boards of elections' budgets.

Small Business Effect: None.

Analysis

Bill Summary: The commission must remove a judge from office on a finding by a majority of the members that the judge, while performing the judge's duties (1) refused to enforce applicable law, court rules, or constitutional provisions; (2) rendered a decision or issued an order that is contrary to applicable law, court rules, or constitutional provisions; or (3) knowingly disregarded applicable law, court rules, or constitutional provisions.

The commission may issue a reprimand to any judge who has been found by the commission to have engaged in any of the above misconduct if (1) the judge was not acting in an appellate capacity when the misconduct occurred; (2) the misconduct occurred as a result of the judge's misinterpretation of applicable law, court rules, or provisions of the Maryland Constitution or the U.S. Constitution; and (3) the commission has not issued a reprimand to the judge within one year before the misconduct occurred. If the commission finds that any of the specified misconduct occurred in a case before the Court of Appeals or in a case before a panel of judges in any other court in the State, the commission may not remove or reprimand a judge who sat in the case unless the judge voted in favor of the ruling or decision that the commission finds to be misconduct.

On a finding that a judge engaged in any of the misconduct specified above, the commission must issue an order of removal specifying an effective date of the judges' removal to occur no sooner than 30 days and no later than 60 days after the order is issued. In a proceeding before the commission, a judge must have the right of representation by counsel and have the right to testify on the judge's own behalf in person or by written statement. A judge removed from office under the bill's provisions must forfeit any rights and privileges, including pension benefits, accruing from the judge's judicial service. A complaint alleging misconduct may be filed by any person, including by a party or by counsel for a party in a case, whether pending or concluded, in which a presiding judge is alleged to have engaged in the misconduct complained of under the bill's provisions.

Current Law: Article IV of the Maryland Constitution requires the Governor to remove a judge from office if impeached, or on conviction in a court of law of incompetency, of willful neglect of duty, misbehavior in office, or any other crime. The judge must also be removed on the address of the General Assembly, with two-thirds of each house concurring, if the judge has been notified of the charges and provided with an opportunity to make a defense.

Background: The Commission on Judicial Disabilities was established by an amendment to the Maryland Constitution in 1966. The commission investigates complaints against any judge of the Court of Appeals, Court of Special Appeals, circuit courts, District Court, or orphans' courts. In addition to the power to issue a reprimand, the commission may recommend to the Court of Appeals the removal, censure, or other appropriate disciplining of a judge. The commission consists of 11 members appointed by the Governor with the advice and consent of the Senate. Three members are appointed from among the judges, three from among the members of the Maryland Bar, and five from the public. Pursuant to Maryland Rule 16-804, the commission must appoint an investigative counsel and may appoint additional personnel to assist with investigations. In fiscal 2011, the commission received 124 written complaints.

State Expenditures: State costs of printing absentee and provisional ballots may increase to the extent inclusion of the proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). Any increase in costs, however, is expected to be relatively minimal, and it is assumed that the potential for such increased costs will have been anticipated in the State Board of Elections' budget. Pursuant to Chapter 564 of 2001, the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

Local Expenditures: Local boards of elections' printing and mailing costs may increase to include information on the proposed constitutional amendment with specimen ballots mailed to voters prior to the next general election and to include the proposed amendment on absentee and provisional ballots. It is assumed, however, that the potential for such increased costs will have been anticipated in local boards of elections' budgets.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Ethics Commission, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2012
mc/kdm

Analysis by: Jennifer K. Botts

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