

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1160 (Delegate Miele, *et al.*)
 Judiciary and Ways and Means

Baltimore County - Judges - Nonpartisan Elections (Baltimore County Voting Rights Act)

This bill sets forth a process by which judges in Baltimore County of the circuit court and the orphans’ court are nominated and elected.

Fiscal Summary

State Effect: General fund expenditures for the State Board of Elections (SBE) increase by a maximum of \$16,600 in FY 2018 and by a maximum of \$7,200 every other year thereafter. Revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	16,600	0	7,200	0	7,200
Net Effect	(\$16,600)	\$0	(\$7,200)	\$0	(\$7,200)

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

Local Effect: Baltimore County election costs increase by a maximum of \$16,600 in FY 2018 and by a maximum of \$7,200 every other year thereafter. Local revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Judges of the circuit court and orphans’ court in Baltimore County are to be elected on a nonpartisan basis. In a primary election to nominate candidates for the orphans’ court or the circuit court, any registered voter of Baltimore County, regardless of

party affiliation or lack thereof, is eligible to vote in those contests. Candidates for those offices must, without party designation or regard to party affiliation (1) file certificates of candidacy; (2) be certified to the ballot; (3) appear on the ballot; (4) be voted on; and (5) be nominated and elected. Before certifying the names of a candidate for these offices, the local board of elections must determine whether the candidate is qualified, as specified.

An individual may not qualify as a candidate for a circuit court or orphans' court judge by filing a petition or being nominated by a political party. In each year that one or more judges are to be elected, candidates must be nominated at the primary election. If a candidate dies or becomes disqualified before the ballots are printed, or at a time when the ballots can be reprinted, the name of the candidate may not appear on the ballot; if the ballots cannot be reprinted, any votes cast for that candidate may not be counted. 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 must be the nominated candidates. If two or more candidates each receive the lowest number of votes necessary to qualify for nomination, creating a tie for the last nomination for the office to be filled, each must be a nominated candidate.

If, after the primary election but before the general election, a nominee dies, declines the nomination, or becomes disqualified before the ballots are printed or at a time when the ballots can be reprinted, the name of the nominee may not appear on the ballot. If such events occur after it is too late for the ballots to be reprinted, and if the nominee receives sufficient votes to have been elected, the office is deemed vacant and must be filled as if the vacancy had occurred during the term of office.

In a general election for judge of the circuit or orphans' court, a voter may vote for a number of nominees equal to the number of judges to be elected. The nominees, equal in number to the number of offices to be filled, who receive the largest number of votes in a general election are declared elected. If a tie is created, as specified, the office is considered vacant and must be filled as if the vacancy occurred during the term of office for which the election is being held.

Current Law:

Circuit Court Judges

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 more than 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.

Orphans' Court Judges

Under the Maryland Constitution, each county elects three judges to the orphans' court of their respective jurisdictions, with the exception of Montgomery and Harford counties, where a circuit court judge sits as the orphans' court. The orphans' courts are the State's probate courts. The courts supervise the handling of estates and also have certain jurisdiction over the guardianship of minors and their property. Elections for judge of the orphans' court occur during the gubernatorial elections. Orphans' court judges, however, are listed on a ballot with party affiliation.

Background: Unlike their colleagues on the Court of Appeals and the Court of Special Appeals, circuit court judges may face a contested election in which qualified members of the Maryland Bar challenge the incumbent judges by filing as candidates. Circuit court judges are 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 the Circuit Court for St. Mary's County 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."

State/Local Fiscal Effect: Baltimore County advises that the bill necessitates a third ballot for *up to* approximately 102,500 voters in the county who are not registered with one of the two major political parties. Baltimore County estimates costs of \$0.14 per ballot. Pursuant to Chapter 564 of 2001, SBE shares the costs of printing paper ballots with the local boards of elections. SBE estimates one-time programming costs of \$18,800, which are shared equally with the county. Accordingly, State expenditures and Baltimore County expenditures each increase by a maximum of \$16,575 in fiscal 2018 and by up to \$7,175 each every other year thereafter, which accounts for shared ballot printing costs in primary election years and one-time programming costs in fiscal 2018. While orphans' court judges are elected during gubernatorial primary election years, the estimate also assumes that there is at least one affected circuit court judgeship on the ballot in presidential primary election years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore County; Judiciary (Administrative Office of the Courts); Maryland State Board of Elections; Department of Legislative Services

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mm/kdm

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