

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 579 (Delegate Hill, *et al.*)
Judiciary and Ways and Means

Circuit Court Judges - Election, Qualifications, and Term of Office

This proposed constitutional amendment alters the method of selection and tenure of circuit court judges. Circuit court judges must be selected by gubernatorial appointment, subject to confirmation by the Senate, followed by approval or rejection via retention election by the voters. The bill also decreases the term of office from 15 to 10 years following election.

Fiscal Summary

State Effect: None. It is assumed that the potential for increased costs to include any constitutional amendments proposed by the General Assembly on the ballot at the next general election will have been anticipated in the State Board of Elections' (SBE) budget irrespective of this bill.

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 irrespective of this bill.

Small Business Effect: None.

Analysis

Bill Summary: Any vacancy in a circuit court judgeship must be filled in the same manner as a vacancy on the Court of Appeals or Court of Special Appeals. Specifically, when a vacancy occurs, the Governor (with advice and consent of the Senate) appoints a successor who holds the office until the next general election following the expiration of one year from the date of the vacancy. Retention of the judge in office is subject to approval or

rejection by the voters of the county or Baltimore City from which the judge was appointed at that election and at the general election every 10 years thereafter. The judge's name is placed on the appropriate ballot without opposition. If the voters reject the judge's retention in office, or if the vote is tied, the office becomes vacant 10 days after certification of the election returns.

For the purposes of implementing these changes:

- each circuit court judge already elected to office on the effective date of this constitutional amendment continues in office until the next general election after the end of the elected term or until the judge attains the age of 70, whichever occurs first; thereafter, continuance of the judge in office becomes subject to the provisions described above; and
- each circuit court judge who is in office, but who has not been elected by the voters to that office as of the effective date of this constitutional amendment, must be reappointed to that office within 15 days after the effective date of the amendments. Thereafter, continuance of the judge in office becomes subject to the retention method described above.

Current Law: Judges of the circuit courts are elected at the general election by the qualified voters of the respective county or Baltimore City in which the circuit court sits. This is a "contested" election, in which any challenger who meets the constitutional requirements may run. Each judge holds the office for 15 years from the time of election, and until either the successor is elected and qualified, or the judge reaches age 70, whichever occurs first.

If a circuit court judge becomes unable to discharge the judge's duties due to sickness or mental or physical infirmity, the General Assembly, by a two-thirds vote of each house and with approval of the Governor, may retire the judge from office.

On any vacancy in a circuit court judgeship, the Governor must appoint a replacement, who holds the office until the election and qualification of a successor. The successor must be elected:

- if the vacancy occurs due to the expiration of a 15-year term, at the first general election following the expiration of the term; or
- if the vacancy occurs otherwise, at the next general election that occurs after one year following the occurrence of the vacancy.

Except in the case of reappointment of a judge, no person may be appointed who would become disqualified by reason of age prior to the prescribed time when the judge's successor would have been elected.

A circuit court judge must retire when the judge reaches age 70.

Background: Most judges within the State are appointed and retained through a hybrid process. At all four court levels (the Court of Appeals, the Court of Special Appeals, circuit courts, and the District Court), the Governor appoints a qualified member of the Maryland Bar in the case of a vacancy or the creation of a new judgeship. For both appellate courts, these appointments must be confirmed by the Senate, and the judge holds the office until the next general election following the expiration of one year from the date of the occurrence of the vacancy. At the general election, the incumbent judge's name is placed on the ballot without opposition, and citizens vote for or against the retention of the judge for a 10-year term. For the District Court, judges are appointed by the Governor and serve 10-year terms upon confirmation by the Senate.

To assist in the selection process for judges at all levels, numerous governors since 1970 have issued executive orders creating judicial nominating commissions to recommend candidates for appointment. The nominating commissions review applications from interested attorneys, interview candidates, and consider recommendations from citizens and various bar associations. The commissions must submit to the Governor a list of candidates who are deemed to be legally and professionally most fully qualified for judicial office, and the Governor must make the appointment from the list.

As specified above, in contrast to the other judges in the State, circuit court judges face a different process. Because any member of the Maryland Bar who meets the minimum constitutional requirements may challenge the incumbent judges by filing as a candidate, judges at the circuit court level are the only judges in the State who may face a contested election in order to retain their appointment. It is also only at the circuit court level where an individual may become a judge without a gubernatorial appointment and without being screened and recommended by a judicial nominating commission.

The process of judicial selection and retention in Maryland is similar to the methods that many other states use to fill their judicial vacancies. According to 2015 data from the National Center for State Courts, judges at all levels are initially selected through either partisan or nonpartisan elections in 22 states, while an additional 10 states hold elections only for some judges. Almost half of the states enlist a judicial nominating commission for the initial selection of some or all judges. Regarding the retention or continuance of judges in office, at least some judges must stand for reelection in approximately 30 states. Of these states, in approximately 20 states, all judges are subject to reelection, while in the remaining states, including Maryland, only some judges face contested elections and the

remainder stand in retention elections only or are otherwise reappointed. Nine other states exclusively use retention elections for all judges. Several states select and retain judges through legislative election and reelection. Other states either reappoint their judges or do not have a retention method since the judges receive a lifetime tenure upon selection.

The U.S. Supreme Court recently addressed one of the issues potentially arising from judicial elections. In *Williams-Yulee v. Florida Bar*, No. 13–1499, 575 U.S. __ (2015), a Florida attorney sued the Florida State Bar Association when she was reprimanded and fined for signing her name to a fundraising letter in violation of a rule prohibiting judicial candidates from personally soliciting contributions. The Florida Supreme Court upheld the recommended sanctions, in part noting that the personal solicitation of campaign funds raises an appearance of impropriety and may result in the public questioning the judge’s impartiality. In an opinion authored by Chief Justice Roberts, the court affirmed and stated that a state’s compelling interest in maintaining public trust in judicial integrity withstood the strict scrutiny required of any measure limiting free speech protected under the First Amendment. Accordingly, the court held that states may prohibit judicial candidates from personally soliciting funds for their election campaigns.

State Expenditures: State costs of printing 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). However, it is assumed that the potential for such increased costs resulting from any proposed constitutional amendments will have been anticipated in the SBE budget irrespective of this bill. Pursuant to Chapter 564 of 2001, SBE shares the costs of printing paper ballots with the local boards of elections.

The Department of Legislative Services also notes that altering the terms of office for circuit court judges does not directly affect when and how judges qualify to receive benefits under the judicial pension system.

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 ballots. It is assumed, however, that the potential for such increased costs resulting from any proposed constitutional amendments will have been anticipated in local boards of elections’ budgets irrespective of this bill.

Additional Information

Prior Introductions: HB 388 of 2016, a substantially similar bill, received an unfavorable report from the House Judiciary Committee. HB 1071 of 2015 received a hearing in the House Judiciary and Ways and Means Committees but was subsequently withdrawn. SB 295 of 2013 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Similar bills were also introduced in the 2011, 2010, 2008, 2007, and 2003 to 2005 sessions.

Cross File: None.

Information Source(s): Baltimore, Carroll, Montgomery, Queen Anne's, and St. Mary's counties; Judiciary (Administrative Office of the Courts); National Center for State Courts; Department of Legislative Services

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