

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 130 (Senator Zirkin)
 Judicial Proceedings

Election of Circuit Court Judges - Nonpartisan Elections

This bill sets forth a process by which judges of the circuit court are nominated and elected. **The bill takes effect January 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase by \$12,500 in FY 2019 and by approximately \$3,200 every other year thereafter beginning in FY 2020. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	12,500	3,200	0	3,200	0
Net Effect	(\$12,500)	(\$3,200)	\$0	(\$3,200)	\$0

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

Local Effect: Baltimore City election costs increase by a minimum of \$3,200 beginning in FY 2020 and every other year thereafter. The bill is not anticipated to materially impact expenditures in other jurisdictions, as discussed below. Local revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Judges of the circuit court are to be elected on a nonpartisan basis. In a primary election to nominate candidates for the circuit court, any registered voter of the 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.

The bill excludes individuals from qualifying as a candidate for a circuit 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, after the deadline for withdrawal, the number of candidates who filed certificates of candidacy in any contest does not exceed one more than the number of offices to be filled, a certificate of nomination must be issued to each candidate. The candidates, equal in number to one more than 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. The bill specifies procedures for circumstances in which a candidate or nominee dies, becomes disqualified, or declines the nomination.

In a general election for judge of the circuit 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 and by the selection of one of the nominees who ties in the general election.

Current Law: 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 specifies 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.

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 the State Board of Elections (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: SBE advises that the bill may necessitate a third ballot in Baltimore City only for approximately 45,500 voters who are not registered with one of the two major political parties. Because all other jurisdictions will have nonpartisan elections for school board members by the bill's effective date, an additional ballot is not necessary in other counties. SBE 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. Accordingly, expenditures increase by approximately \$3,185 each for Baltimore City and SBE, beginning in fiscal 2020 and every other year thereafter, which accounts for shared ballot printing costs in primary election years. Baltimore City expenditures likely further increase minimally in primary election years due to additional postage costs.

SBE also estimates one-time programming costs of \$25,000, which are shared equally between SBE and all jurisdictions. Accordingly, general fund expenditures for SBE increase by approximately \$12,500 in fiscal 2019 (which accounts for the bill's January 1, 2019 effective date). Because the remaining costs (\$12,500) are shared equally between all jurisdictions, this minimal expenditure increase is not anticipated to materially impact any one jurisdiction.

Additional Information

Prior Introductions: SB 744 of 2017, a substantially similar bill, was referred to the Senate Judicial Proceedings Committee but was withdrawn prior to a hearing.

Cross File: None.

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

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