

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 607 (Delegate West, *et al.*)
Judiciary and Ways and Means

Circuit Court Judges - Selection and Tenure

This proposed constitutional amendment alters the method of selection and tenure of circuit court judges. Circuit court judges must be selected by gubernatorial appointment and subject to confirmation by the Senate. The continuance in office of a circuit court judge who is confirmed by the Senate by a vote of less than 80% of all members is subject to approval or rejection via a contested election at the next general election following the expiration of one year from the date the judge took office.

Fiscal Summary

State Effect: None.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: When a vacancy occurs, the Governor (with advice and consent of the Senate) appoints a successor who is qualified to fill the office. Confirmation by the Senate must be made on a majority vote of all members of the Senate. A circuit court judge appointed by the Governor and confirmed by the Senate may take office by taking the prescribed oath of office within 30 days after confirmation. If the judge is appointed and confirmed but fails to take office within 30 days after confirmation, the office is deemed vacant.

A circuit court judge appointed by the Governor and confirmed by the Senate by a vote of at least 80% of its members who takes office within 30 days after confirmation serves a term of 15 years and until the judge's successor is appointed or elected, as applicable, and qualified or until the judge attains age 70, whichever occurs first. If a circuit court judge who was confirmed by the Senate by at least a majority but less than 80% of all members takes office, the continuance in office is subject to approval or rejection by the registered voters of the appropriate city or county at the next general election following the expiration of one year from the date the judge took office. The election must be a contested election in which other qualified candidates may file. If the judge does not win this election, the office becomes vacant 10 days after certification of the election results. If the judge wins election, the judge serves a term of 15 years from the date that the judge took office or until a successor is appointed or elected, as applicable, and qualified or until the judge attains age 70, whichever occurs first.

If the 15-year term of a circuit court judge expires before the judge attains age 70, the judge may be reappointed by the Governor for another 15-year term, or until the judge attains age 70, whichever occurs first. The reappointment is not subject to confirmation by the Senate.

In case of the inability of any circuit court judge to discharge the judge's duties, as specified, the General Assembly, with two-thirds of the members of each house concurring and the approval of the Governor, has the power to retire the judge from office.

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 judge's successor is appointed or elected, as applicable, and qualified or until the judge attains age 70, whichever comes first; thereafter, continuance of the judge in office becomes subject to the provisions described above; and
- each circuit court judge in office, but who has not been elected to that office as of the effective date of this constitutional amendment, continues to be governed by existing provisions regarding circuit court judges. If the judge is elected to the office, the judge continues in office until the judge's successor is appointed or elected, as applicable, and qualified or until the judge attains age 70, whichever occurs first. Thereafter, continuance of the judge in office at the end of the elected term becomes subject to the 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

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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 (the latest information readily available), 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.

Additional Information

Prior Introductions: HB 826 of 2017, a substantially similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. HB 223 of 2016, a similar bill, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

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

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