

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1779
 Judiciary

(Delegate Vallario, *et al.*)

Judges - Mandatory Retirement Age

This proposed constitutional amendment, if approved by the voters at the next general election, would raise the mandatory retirement age, from age 70 to 73, for judges who are first elected or appointed to office on or after the date the constitutional amendment is declared by the Governor to be adopted. Current judges who are in office when the constitutional amendment is adopted and reach age 70 before the completion of their term may petition the Governor for an extension to serve until they complete their term or reach age 73, whichever comes first. The Governor may extend a judge’s term for the purpose of granting such an extension.

Fiscal Summary

State Effect: If approved by the voters at referendum, State pension contributions for sitting judges likely *decrease* by as much as \$2.2 million beginning in FY 2021, but actual savings are less if the Governor does not receive or approve petitions from some sitting judges to extend their tenure. Raising the retirement age for future judicial appointees has no fiscal effect within the timeframe covered by this fiscal and policy note because they are not eligible to retire for five years. However, to the extent that the proposed constitutional amendment causes future judicial appointees to work past the age of 70, it may reduce State pension liabilities and contributions in the out-years due to deferred retirement payments. No effect on revenues.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	0	(2,210,000)	(2,300,000)	(2,330,000)
Net Effect	\$0	\$0	\$2,210,000	\$2,300,000	\$2,330,000

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

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: Article IV, § 3 of the Maryland Constitution institutes mandatory retirement for all circuit, District, and appellate court judges at age 70. However, retired judges, except retired Orphans' Court judges, may be appointed on a temporary basis by the Chief Judge of the Court of Appeals to serve as a judge on any court except an Orphans' Court, regardless of age. Exceptions allow former circuit court judges in Harford and Montgomery counties to perform acts that a judge of the Orphans' Court in their respective counties is authorized to perform.

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 Maryland Senate and the judge holds the office until the first 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; when they reach the end of their term, they must be reappointed by the Governor.

In contrast to appellate judges in the State, circuit court judges face a different process. They are also appointed by the Governor and must stand for election at the first general election following the expiration of one year after the occurrence of the vacancy. However, unlike their colleagues on the appellate courts, they are elected to 15-year terms (which begin following their election) and may face a contested election in which any member of the Maryland Bar who meets the minimum constitutional requirements may challenge the incumbent judges by filing as a candidate. Thus, judges at the circuit court level are the only judges within the State who may face a contested election in order to retain their appointment. At the conclusion of their 15-year term as an elected judge, they may face another contested election to remain on the bench.

There is no salary scale for judges; rather, their compensation is dictated by the court on which they sit, not their tenure in that position.

Judges' Retirement System

All circuit, District, and appellate court judges are members of the Judges' Retirement System (JRS) as a condition of their employment. The employee contribution for JRS members is 8% of compensation, but after 16 years of service members cease making employee contributions and earning service credit.

Eligibility requirements for normal service retirements under JRS differ for members who joined before July 1, 2012, and those who joined on or after that date. Members who joined prior to that date vest immediately and are eligible to retire at age 60. Members who joined on or after that date vest after 5 years and are also eligible to retire at age 60. A full service retirement is equal to two-thirds of the salary of a judge sitting in a similar position as the retiree at the time of termination of employment or retirement; retirees with fewer than 16 years of service in JRS receive a prorated benefit based on their years of service.

As of June 30, 2017, there were 312 active members of JRS. At that time, their average age was 57.9 and their average service was 8.7 years.

State Fiscal Effect: The proposed constitutional amendment does not alter the total number of sitting judges, and reduced turnover among judges as a result of longer terms on the bench has no effect on judicial compensation. Therefore, the proposed constitutional amendment has no direct effect on the State's judicial payroll.

Possible Longer Terms for Sitting Judges

The proposed constitutional amendment allows current judges who remain in service and who will reach age 70 *on or after* December 2018 (when the amendment would be approved by voters and declared by the Governor to have been adopted) to petition the Governor to remain on the bench until they reach age 73 or their term expires, whichever comes first. If their petition is approved by the Governor, these individuals would be eligible to continue serving as judges for up to 3 more years and earn additional service credit in JRS if they have not already earned the maximum 16 years allowed. Thus, the proposed constitutional amendment only adds to pension liabilities to the extent that the judges who meet these criteria would not otherwise earn the full 16 years of service in JRS before reaching age 70.

The proposed constitutional amendment is subject to approval by the voters at the November 6, 2018 general election. A conservative estimate is that the certification of the results of the referendum occurs by December 31, 2018, so the amendment would take effect by that date. Based on age and tenure information for members of JRS:

- 15 judges reach age 70 before the amendment takes effect and have to retire (6 of them will not yet have 16 years of service), so the bill does not affect them;
- 59 judges reach age 70 after the amendment takes effect but before accruing the full 16 years of service (assuming they continue serving until age 70); and
- 238 attain the full 16 years of service before reaching age 70 (assuming they continue serving that long).

This analysis assumes that all judges who reach age 70 after the amendment takes effect continue serving an additional 3 years after successfully petitioning the Governor to remain on the bench, regardless of whether they have accrued the full 16 years of service for their full normal service retirement.

Pension Costs

An estimated 59 current judges will turn 70 before earning the maximum 16 years of service credit in JRS, assuming they continue serving until age 70. These judges may earn more service credit in JRS under the proposed constitutional amendment if they successfully petition the Governor to extend their tenure on the bench.

The General Assembly's consulting actuary has determined that any additional service credit earned by sitting judges able to work for more years is more than offset by actuarial savings generated by deferred benefit payments to these individuals as well as the 238 active members who continue working without accruing additional benefits. Therefore, there is likely a net savings to the State in the form of reduced pension liabilities and employer contributions due to members working longer at an advanced age. Given the timing of both the election at which the proposed constitutional amendment would be approved and the actuarial valuations conducted by the State Retirement and Pension System, any fiscal effect in the form of reduced State pension contributions would not begin until fiscal 2021. If all eligible judges successfully petition to remain on the bench, the actuary estimates that first-year savings in State pension contributions total \$2.2 million, with savings continuing to accrue in future years according to actuarial assumptions. JRS contributions are paid with general funds. To the extent that some judges do not request or are not granted extensions, the savings are less.

All judges appointed for the first time following the approval of the amendment would be eligible for the longer terms, but they are subject to a five-year vesting period and, therefore, would not be eligible for retirement during the time period covered by this fiscal and policy note. To the extent that the proposed constitutional amendment causes future judges to work past the age of 70, it likely reduces future State pension liabilities and contributions due to deferred retirements.

Additional Information

Prior Introductions: As amended, SB 502 of 2016 was identical to this bill. It passed the Senate and passed second reading in the House, but no further action was taken. Its cross file, HB 481, received a hearing in the House Judiciary Committee, but no further action was taken. Another similar bill, SB 847 of 2015, also passed the Senate and passed second reading in the House, but no further action was taken.

Cross File: None.

Information Source(s): Bolton Partners, Inc.; Judiciary (Administrative Office of the Courts); State Retirement Agency; Department of Legislative Services

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nb/rhh

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