Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 487 (Delegate Dumais)

Judiciary and Ways and Means

Judicial Elections - Retention and Frequency

This proposed constitutional amendment increases, from 10 to 12, the number of years between retention elections for judges of the Court of Appeals and Court of Special Appeals. It also eliminates contested elections for circuit court judges and establishes that the continuance in office of a circuit court judge is subject to approval or rejection via retention election at the next general election following the expiration of 1 year from the date of the occurrence of the vacancy that the judge was appointed to fill, and at the general election occurring every 12 years thereafter.

Fiscal Summary

State Effect: None.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Circuit Court Judges

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 must run in an election in which one or more challengers may contest the judge's

election at the first general election following the occurrence of the vacancy or expiration of the term and every 15 years thereafter.

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

Appellate Judges

The continuance in office of a judge of the Court of Appeals or Court of Special Appeals 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. An appellate 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 1 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 judicial vacancies. According to the National Center for State Courts, judges at all levels are initially selected through either partisan or nonpartisan elections in 23 states, while 11 states other than Maryland hold elections only for some judges. Seventeen states enlist a judicial nominating commission for the selection of some or all judges. Regarding the retention or continuance of judges in office, at least some judges must stand for reelection in 39 states. Of these states, in 20 states, all judges are subject to reelection, while in 9 states only some judges face contested elections and the remainder stand in retention elections. Nine states exclusively use retention elections for all judges, while 9 states exclusively reappoint judges. Several states select and retain judges through legislative election and reelection and several states do not have a retention method because judges serve until the age of mandatory retirement or receive a lifetime tenure on selection.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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