

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1038 (Delegate Wilson)
Judiciary and Ways and Means

Circuit Court Judges - Retention Election

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.

Fiscal Summary

State Effect: None.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Any vacancy in a circuit court judgeship must be filled in a similar 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 1 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 15 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 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, 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 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, as of 2015 (the latest information readily available) 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.

The U.S. Supreme Court 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: SB 246 of 2019 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 724 of 2017 received a hearing in the House Judiciary Committee, but no further action was taken. HB 224 of 2016 received an unfavorable report from the House Judiciary Committee. HB 548 of 2015 received a hearing in the House Judiciary Committee but was subsequently withdrawn. Similar bills were also introduced in prior sessions.

Designated 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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