

HOUSE BILL 447

D1, D2 CONSTITUTIONAL AMENDMENT
HB 518/20 – JUD & W&M

11r0606

By: **Delegate Dumais**

Introduced and read first time: January 15, 2021

Assigned to: Judiciary and Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Judges – Selection, Election, Tenure, and Continuance in Office**

3 FOR the purpose of proposing an amendment to the Maryland Constitution relating to the
4 selection, election, tenure, and continuance in office of a judge of an appellate court
5 or a circuit court; altering the methods for filling vacancies in the offices of such
6 judges; altering provisions relating to the term of office of such judges; altering
7 provisions for the continuance in office of such judges on the expiration of their terms
8 under certain circumstances; altering provisions relating to the election of such
9 judges; providing for the application of a certain provision of this Act; defining
10 certain terms; making stylistic and conforming changes; and submitting this
11 amendment to the qualified voters of the State for their adoption or rejection.

12 BY proposing a repeal of the Maryland Constitution

13 Article IV – Judiciary Department

14 Section 3, 5, 5A, 14B, and 41D

15 BY proposing an addition to the Maryland Constitution

16 Article IV – Judiciary Department

17 Section 3

18 BY proposing an amendment to the Maryland Constitution

19 Article IV – Judiciary Department

20 Section 11, 12, and 18B

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
22 (Three-fifths of all the members elected to each of the two Houses concurring), That it be
23 proposed that the Maryland Constitution read as follows:

24 **Article IV – Judiciary Department**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 [3.

2 Except for the Judges of the District Court, the Judges of the several Courts other
3 than the Court of Appeals or any intermediate courts of appeal shall, subject to the
4 provisions of Section 5 of this Article of the Constitution, be elected in Baltimore City and
5 in each county, by the qualified voters of the city and of each county, respectively, all of the
6 said Judges to be elected at the general election to be held on the Tuesday after the first
7 Monday in November, as now provided for in the Constitution. Each of the said Judges
8 shall hold his office for the term of fifteen years from the time of his election, and until his
9 successor is elected and qualified, or until he shall have attained the age of seventy years,
10 whichever may first happen, and be reeligible thereto until he shall have attained the age
11 of seventy years, and not after. In case of the inability of any of said Judges to discharge
12 his duties with efficiency, by reason of continued sickness, or of physical or mental
13 infirmity, it shall be in the power of the General Assembly, two-thirds of the members of
14 each House concurring, with the approval of the Governor to retire said Judge from office.]

15 **3.**

16 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
17 **INDICATED.**

18 **(2) "APPELLATE COURT" MEANS THE COURT OF APPEALS OR THE**
19 **COURT OF SPECIAL APPEALS.**

20 **(3) "COUNTY" MEANS A COUNTY OF THE STATE OR BALTIMORE CITY.**

21 **(B) THIS SECTION:**

22 **(1) APPLIES ONLY TO A JUDGE OF AN APPELLATE COURT OR A**
23 **CIRCUIT COURT; AND**

24 **(2) DOES NOT APPLY TO A JUDGE OF AN ORPHANS' COURT OR THE**
25 **DISTRICT COURT.**

26 **(C) (1) ON THE OCCURRENCE OF A VACANCY IN THE OFFICE OF A CIRCUIT**
27 **COURT OR APPELLATE COURT JUDGE, WHETHER BY DEATH, RESIGNATION,**
28 **REMOVAL, RETIREMENT, REJECTION BY THE VOTERS OF AN INCUMBENT, CREATION**
29 **OF THE OFFICE OF A CIRCUIT COURT OR APPELLATE COURT JUDGE, OR OTHERWISE,**
30 **THE GOVERNOR, WITH THE ADVICE AND CONSENT OF THE SENATE, SHALL APPOINT**
31 **AN INDIVIDUAL DULY QUALIFIED TO FILL THAT OFFICE.**

32 **(2) A MEMBER OF THE GENERAL ASSEMBLY WHO IS OTHERWISE**
33 **QUALIFIED FOR APPOINTMENT TO JUDICIAL OFFICE IS NOT DISQUALIFIED FOR**
34 **APPOINTMENT BY REASON OF MEMBERSHIP IN A GENERAL ASSEMBLY THAT**

1 PROPOSED OR ENACTED ANY CONSTITUTIONAL AMENDMENT OR STATUTE
2 AFFECTING:

3 (I) THE METHOD OF SELECTION, CONTINUANCE IN OFFICE,
4 RETIREMENT, OR REMOVAL OF A JUDGE;

5 (II) THE CREATION OF A COURT;

6 (III) AN INCREASE OR A DECREASE IN THE NUMBER OF JUDGES
7 OF ANY COURT; OR

8 (IV) AN INCREASE OR A DECREASE IN THE SALARY, PENSION, OR
9 OTHER ALLOWANCES OF A JUDGE.

10 (D) (1) (I) THE CONTINUANCE IN OFFICE OF A CIRCUIT COURT OR
11 APPELLATE COURT JUDGE FOLLOWING APPOINTMENT IN ACCORDANCE WITH
12 SUBSECTION (C) OF THIS SECTION IS SUBJECT TO APPROVAL OR REJECTION BY THE
13 REGISTERED VOTERS AS SPECIFIED IN THIS PARAGRAPH AT THE NEXT GENERAL
14 ELECTION FOLLOWING THE EXPIRATION OF 1 YEAR AFTER THE DATE OF THE
15 OCCURRENCE OF THE VACANCY THAT THE CIRCUIT COURT OR APPELLATE COURT
16 JUDGE WAS APPOINTED TO FILL AND AT THE GENERAL ELECTION NEXT OCCURRING
17 EVERY 14 YEARS THEREAFTER.

18 (II) THE CONTINUANCE IN OFFICE OF A JUDGE OF THE COURT
19 OF APPEALS IS SUBJECT TO APPROVAL OR REJECTION BY THE REGISTERED VOTERS
20 OF THE APPELLATE JUDICIAL CIRCUIT FROM WHICH THE JUDGE WAS APPOINTED.

21 (III) THE CONTINUANCE IN OFFICE OF A JUDGE OF THE COURT
22 OF SPECIAL APPEALS IS SUBJECT TO APPROVAL OR REJECTION BY THE
23 REGISTERED VOTERS OF THE GEOGRAPHIC AREA PRESCRIBED BY LAW.

24 (IV) THE CONTINUANCE IN OFFICE OF A JUDGE OF A CIRCUIT
25 COURT IS SUBJECT TO APPROVAL OR REJECTION BY THE REGISTERED VOTERS OF
26 THE COUNTY FROM WHICH THE JUDGE WAS APPOINTED.

27 (2) (I) THE APPROVAL OR REJECTION BY THE REGISTERED
28 VOTERS OF A CIRCUIT COURT OR APPELLATE COURT JUDGE SHALL BE A VOTE FOR
29 THE JUDGE'S CONTINUANCE IN OFFICE FOR A TERM OF 14 YEARS OR UNTIL THE
30 JUDGE'S REMOVAL, RETIREMENT, RESIGNATION, OR DEATH.

31 (II) THE CIRCUIT COURT OR APPELLATE COURT JUDGE'S NAME
32 SHALL BE ON THE APPROPRIATE BALLOT, WITHOUT OPPOSITION, AND THE VOTERS
33 SHALL VOTE YES OR NO FOR THE CIRCUIT COURT OR APPELLATE COURT JUDGE'S

1 CONTINUANCE IN OFFICE.

2 (III) IF THE VOTERS REJECT THE CIRCUIT COURT OR APPELLATE
3 COURT JUDGE'S CONTINUANCE IN OFFICE OR IF THE VOTE IS TIED, THE OFFICE
4 BECOMES VACANT 10 DAYS AFTER CERTIFICATION OF THE ELECTION RETURNS.

5 (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS
6 SUBSECTION, A CIRCUIT COURT OR APPELLATE COURT JUDGE SHALL RETIRE BY
7 OPERATION OF LAW WHEN THE CIRCUIT COURT OR APPELLATE COURT JUDGE
8 ATTAINS THE AGE OF 70 YEARS.

9 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS
10 SUBSECTION, A CIRCUIT COURT OR APPELLATE COURT JUDGE'S CONTINUANCE IN
11 OFFICE IS SUBJECT TO TERMINATION UNDER SECTIONS 4 AND 4B OF THIS ARTICLE.

12 [5.

13 Upon every occurrence or recurrence of a vacancy through death, resignation,
14 removal, disqualification by reason of age or otherwise, or expiration of the term of fifteen
15 years of any judge of a circuit court, or creation of the office of any such judge, or in any
16 other way, the Governor shall appoint a person duly qualified to fill said office, who shall
17 hold the same until the election and qualification of his successor. His successor shall be
18 elected at the first biennial general election for Representatives in Congress after the
19 expiration of the term of fifteen years (if the vacancy occurred in that way) or the first such
20 general election after one year after the occurrence of the vacancy in any other way than
21 through expiration of such term. Except in case of reappointment of a judge upon expiration
22 of his term of fifteen years, no person shall be appointed who will become disqualified by
23 reason of age and thereby unable to continue to hold office until the prescribed time when
24 his successor would have been elected.]

25 [5A.

26 (a) A vacancy in the office of a judge of an appellate court, whether occasioned by
27 the death, resignation, removal, retirement, disqualification by reason of age, or rejection
28 by the voters of an incumbent, the creation of the office of a judge, or otherwise, shall be
29 filled as provided in this section.

30 (b) Upon the occurrence of a vacancy the Governor shall appoint, by and with the
31 advice and consent of the Senate, a person duly qualified to fill said office who shall hold
32 the same until the election for continuance in office as provided in subsections (c) and (d).

33 (c) The continuance in office of a judge of the Court of Appeals is subject to
34 approval or rejection by the registered voters of the appellate judicial circuit from which he
35 was appointed at the next general election following the expiration of one year from the
36 date of the occurrence of the vacancy which he was appointed to fill, and at the general
37 election next occurring every ten years thereafter.

1 (d) The continuance in office of a judge of the Court of Special Appeals is subject
2 to approval or rejection by the registered voters of the geographical area prescribed by law
3 at the next general election following the expiration of one year from the date of the
4 occurrence of the vacancy which he was appointed to fill, and at the general election next
5 occurring every ten years thereafter.

6 (e) The approval or rejection by the registered voters of a judge as provided for in
7 subsections (c) and (d) shall be a vote for the judge's retention in office for a term of ten
8 years or his removal. The judge's name shall be on the appropriate ballot, without
9 opposition, and the voters shall vote yes or no for his retention in office. If the voters reject
10 the retention in office of a judge, or if the vote is tied, the office becomes vacant ten days
11 after certification of the election returns.

12 (f) An appellate court judge shall retire when he attains his seventieth birthday.

13 (g) A member of the General Assembly who is otherwise qualified for
14 appointment to judicial office is not disqualified by reason of his membership in a General
15 Assembly which proposed or enacted any constitutional amendment or statute affecting the
16 method of selection. Continuance in office, or retirement or removal of a judge, the creation
17 or abolition of a court, an increase or decrease in the number of judges of any court, or an
18 increase or decrease in the salary, pension or other allowances of any judge.]

19 11.

20 The election for Judges, [hereinbefore provided, and all elections for] Clerks,
21 Registers of Wills, and other officers, provided in this Constitution, except State's
22 Attorneys, shall be certified, and the returns made, by the Clerks of the Circuit Courts [of
23 the Counties, and the Clerk of the Superior Court of Baltimore City], respectively, to the
24 Governor, who shall issue commissions to the different persons for the offices to which they
25 shall have been, respectively, elected; and in all such elections for officers other than judges
26 of **A CIRCUIT COURT OR** an appellate court, the person having the greatest number of
27 votes, shall be declared to be elected.

28 12.

29 In case of any contested election for Judges **OF AN ORPHANS' COURT**, [Clerks]
30 **CLERK** of [the Courts of Law] **A CIRCUIT COURT**, and Registers of Wills, the Governor
31 shall send the returns to the House of Delegates, which shall judge of the election and
32 qualification of the candidates at such election[; and if]. **IF** the judgment shall be against
33 the one who has been returned elected, or the one who has been commissioned by the
34 Governor, the House of Delegates shall order a new election within thirty days.

35 [14B.

36 No member of the General Assembly at which the addition of Section 14A was

1 proposed, if otherwise qualified, shall be ineligible for appointment or election as a judge of
2 any intermediate court of appeal, established by law by the General Assembly pursuant to
3 said Section 14A, by reason of his membership in such General Assembly.]

4 18B.

5 (a) For the purpose of implementing the amendments to this article, dealing with
6 the selection and tenure of **CIRCUIT COURT AND** appellate court judges, the following
7 provisions shall govern.

8 (b) Each judge of **A CIRCUIT COURT OR** an appellate court who is in office for an
9 elected term on the effective date of these amendments, unless [he] **THE JUDGE** dies,
10 resigns, retires, or is otherwise lawfully removed, shall continue in office until the general
11 election next after the end of [his] **THE JUDGE'S** elected term, or until [his] **THE JUDGE'S**
12 seventieth birthday, whichever first occurs. [His] **THE JUDGE'S** continuance in office is
13 then subject to the provisions of section [5A(c) and (d)] **3** of this article[, applicable to judges
14 of that court, but in no event shall any judge continue in office after his seventieth
15 birthday].

16 (c) Each judge of a [court specified in subsection (b)] **CIRCUIT COURT OR AN**
17 **APPELLATE COURT** who is in office on the effective date of these amendments, but who
18 has not been elected to **OR RETAINED IN** that office by the voters, shall, within fifteen days
19 after the effective date of these amendments, be reappointed to that office. [His] **THE**
20 **JUDGE'S** continuance in office is then subject to the provisions of section [5A(c) and (d)] **3**
21 of this article[, applicable to judges of that court, but in no event shall any judge continue
22 in office after his seventieth birthday].

23 [41D.

24 The Governor, by and with the advice and consent of the Senate, shall appoint each
25 judge of the District Court whenever for any reason a vacancy shall exist in the office. All
26 hearings, deliberations, and debate on the confirmation of appointees of the Governor shall
27 be public, and no hearings, deliberations or debate thereon shall be conducted by the Senate
28 or any committee or subcommittee thereof in secret or executive session. Confirmation by
29 the Senate shall be made upon a majority vote of all members of the Senate. A judge
30 appointed by the Governor may take office upon qualification and before confirmation by
31 the Senate, but shall cease to hold office at the close of the regular annual session of the
32 General Assembly next following his appointment or during which he shall have been
33 appointed by the Governor, if the Senate shall not have confirmed his appointment before
34 then. Each judge appointed by the Governor and confirmed by the Senate shall hold the
35 office for a term of ten years or until he shall have attained the age of seventy years
36 whichever may first occur. If the ten year term of a judge shall expire before that judge
37 shall have attained the age of seventy years, that judge shall be reappointed by the
38 Governor, with the Senate's consent, for another ten year term or until he shall have
39 attained the age of seventy years, whichever may first occur. To the extent inconsistent
40 herewith, the provisions of Sections 3 and 5 of this Article shall not apply to judges of the

1 District Court.]

2 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly
3 determines that the amendment to the Maryland Constitution proposed by Section 1 of this
4 Act affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the Maryland
5 Constitution concerning local approval of constitutional amendments do not apply.

6 SECTION 3. AND BE IT FURTHER ENACTED, That the amendment to the
7 Maryland Constitution proposed by Section 1 of this Act shall be submitted to the qualified
8 voters of the State at the next general election to be held in November 2022 for adoption or
9 rejection pursuant to Article XIV of the Maryland Constitution. At that general election,
10 the vote on the proposed amendment to the Constitution shall be by ballot, and on each
11 ballot there shall be printed the words “For the Constitutional Amendment” and “Against
12 the Constitutional Amendment”, as now provided by law. Immediately after the election,
13 all returns shall be made to the Governor of the vote for and against the proposed
14 amendment, as directed by Article XIV of the Maryland Constitution, and further
15 proceedings had in accordance with Article XIV.