

HOUSE BILL 1038

D1

CONSTITUTIONAL AMENDMENT

0lr3380

By: **Delegate Wilson**

Introduced and read first time: February 5, 2020

Assigned to: Judiciary and Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Circuit Court Judges – Retention Election**

3 FOR the purpose of proposing an amendment to the Maryland Constitution relating to the
4 selection and tenure of circuit court judges; altering the method of filling vacancies
5 in the office of a judge of a circuit court; providing for retention elections following
6 an appointment to fill a vacancy in the office of a judge of a circuit court; providing
7 for a transitional period under which the terms of certain amendments are to become
8 effective; making stylistic changes; generally relating to the selection, election,
9 appointment, and tenure for judges of the circuit courts; and submitting this
10 amendment to the qualified voters of the State for their adoption or rejection.

11 BY proposing an amendment to the Maryland Constitution
12 Article IV – Judiciary Department
13 Section 3, 5, 5A, and 11

14 BY proposing an addition to the Maryland Constitution
15 Article XVIII – Provisions of Limited Duration
16 Section 6

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

20 **Article IV – Judiciary Department**

21 3.

22 [Except for the Judges of the District Court, the Judges of the several Courts other
23 than the Court of Appeals or any intermediate courts of appeal shall, subject to the
24 provisions of Section 5 of this Article of the Constitution, be elected in Baltimore City and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 in each county, by the qualified voters of the city and of each county, respectively, all of the
2 said Judges to be elected at the general election to be held on the Tuesday after the first
3 Monday in November, as now provided for in the Constitution. Each of the said Judges
4 shall hold his office for the term of fifteen years from the time of his election, and until his
5 successor is elected and qualified, or until he shall have attained the age of seventy years,
6 whichever may first happen, and be reeligible thereto until he shall have attained the age
7 of seventy years, and not after.] In case of the inability of any [of said Judges] **CIRCUIT**
8 **COURT JUDGE** to discharge [his] **THE JUDGE'S** duties with efficiency, by reason of
9 continued sickness, or of physical or mental infirmity, it shall be in the power of the General
10 Assembly, two-thirds of the members of each House concurring, with the approval of the
11 Governor to retire said [Judge] **JUDGE** from office.

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, **SUBJECT TO**
22 **THE PROVISIONS OF THIS ARTICLE**, upon expiration of [his] **THE JUDGE'S** term of
23 [fifteen] **15** years, no person shall be appointed who will become disqualified by reason of
24 age and thereby unable to continue to hold office until the prescribed time when [his] **THE**
25 **JUDGE'S** successor would have been elected.

26 5A.

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

31 (b) Upon the occurrence of a vacancy the Governor shall appoint, by and with the
32 advice and consent of the Senate, a person duly qualified to fill [said office] **THE VACANCY**
33 who shall hold the [same] **OFFICE** until the election for continuance in office as provided
34 in subsections (c) [and], (d), **AND (E) OF THIS SECTION**.

35 (c) The continuance in office of a judge of the Court of Appeals, **FOLLOWING AN**
36 **APPOINTMENT TO FILL A VACANCY**, is subject to approval or rejection by the registered
37 voters of the appellate judicial circuit from which [he] **THE JUDGE** was appointed at the
38 next general election following the expiration of [one] **1** year from the date of the occurrence
39 of the vacancy which [he] **THE JUDGE** was appointed to fill, and at the general election

1 next occurring every [ten] 10 years thereafter.

2 (d) The continuance in office of a judge of the Court of Special Appeals,
3 FOLLOWING AN APPOINTMENT TO FILL A VACANCY, is subject to approval or rejection
4 by the registered voters of the geographical area prescribed by law at the next general
5 election following the expiration of [one] 1 year from the date of the occurrence of the
6 vacancy which [he] THE JUDGE was appointed to fill, and at the general election next
7 occurring every [ten] 10 years thereafter.

8 (E) THE CONTINUANCE IN OFFICE OF A JUDGE OF A CIRCUIT COURT,
9 FOLLOWING AN APPOINTMENT TO FILL A VACANCY, IS SUBJECT TO APPROVAL OR
10 REJECTION BY THE REGISTERED VOTERS OF THE CITY OR COUNTY FROM WHICH THE
11 JUDGE WAS APPOINTED AT THE NEXT GENERAL ELECTION FOLLOWING THE
12 EXPIRATION OF 1 YEAR FROM THE DATE OF THE OCCURRENCE OF THE VACANCY
13 THAT THE JUDGE WAS APPOINTED TO FILL, AND AT THE GENERAL ELECTION NEXT
14 OCCURRING EVERY 15 YEARS THEREAFTER.

15 [(e)] (F) The approval or rejection by the registered voters of a judge as provided
16 for in subsections (c) and (d) shall be a vote for the judge's retention in office for a term of
17 [ten] 10 years or [his] THE JUDGE'S removal. The judge's name shall be on the appropriate
18 ballot, without opposition, and the voters shall vote yes or no for [his] THE JUDGE'S
19 retention in office. If the voters reject the retention in office of a judge, or if the vote is tied,
20 the office becomes vacant [ten] 10 days after certification of the election returns.

21 (G) THE APPROVAL OR REJECTION BY THE REGISTERED VOTERS OF A
22 JUDGE AS PROVIDED FOR IN SUBSECTION (E) OF THIS SECTION SHALL BE A VOTE
23 FOR THE JUDGE'S RETENTION IN OFFICE FOR A TERM OF 15 YEARS OR THE JUDGE'S
24 REMOVAL. THE JUDGE'S NAME SHALL BE ON THE APPROPRIATE BALLOT, WITHOUT
25 OPPOSITION, AND THE VOTERS SHALL VOTE YES OR NO FOR THE JUDGE'S
26 RETENTION IN OFFICE. IF THE VOTERS REJECT THE RETENTION IN OFFICE OF A
27 JUDGE OR IF THE VOTE IS TIED, THE OFFICE BECOMES VACANT 10 DAYS AFTER
28 CERTIFICATION OF THE ELECTION RETURNS.

29 [(f)] (H) An appellate OR CIRCUIT court judge shall retire when [he] THE
30 JUDGE attains [his seventieth birthday] THE AGE OF 70 YEARS.

31 [(g)] (I) A member of the General Assembly who is otherwise qualified for
32 appointment to judicial office is not disqualified by reason of [his] THE MEMBER'S
33 membership in a General Assembly which proposed or enacted any constitutional
34 amendment or statute affecting the method of selection[, Continuance], CONTINUANCE in
35 office, or retirement or removal of a judge, the creation or abolition of a court, an increase
36 or decrease in the number of judges of any court, or an increase or decrease in the salary,
37 pension, or other allowances of any judge.

1 11.

2 The election for [Judges] **JUDGES**, hereinbefore provided, and all elections for
 3 Clerks, Registers of Wills, and other officers, provided in this Constitution, except State's
 4 Attorneys, shall be certified, and the returns made, by the Clerks of the Circuit Courts of
 5 the Counties, and the Clerk of the Superior Court of Baltimore City, respectively, to the
 6 Governor, who shall issue commissions to the different persons for the offices to which they
 7 shall have been, respectively, elected; and in all such elections for officers other than judges
 8 of an appellate **OR CIRCUIT** court, the person having the greatest number of votes, shall
 9 be declared to be elected.

10 **Article XVIII – Provisions of Limited Duration**

11 **6.**

12 **(A) FOR THE PURPOSE OF IMPLEMENTING THE AMENDMENTS TO ARTICLE**
 13 **IV OF THE MARYLAND CONSTITUTION PROPOSED BY HOUSE BILL ____ (0LR3380)**
 14 **OF 2020 CONCERNING THE SELECTION AND TENURE OF CIRCUIT COURT JUDGES,**
 15 **THE FOLLOWING PROVISIONS SHALL GOVERN. IN ACCORDANCE WITH ARTICLE XIV,**
 16 **SECTION 1A OF THE MARYLAND CONSTITUTION, THIS SECTION SHALL EXPIRE**
 17 **WHEN ALL OF THE JUDGES OF THE CIRCUIT COURTS HAVE COMPLETED ALL OF THE**
 18 **TERMS FOR WHICH THE JUDGES ARE RETAINED IN OFFICE UNDER SUBSECTIONS (B)**
 19 **AND (C) OF THIS SECTION OR HAVE VACATED THEIR OFFICES FOR ANY REASON.**

20 **(B) EACH JUDGE OF A CIRCUIT COURT WHO IS IN OFFICE FOR AN ELECTED**
 21 **TERM ON THE EFFECTIVE DATE OF THESE AMENDMENTS, UNLESS THE JUDGE DIES,**
 22 **RESIGNS, RETIRES, OR IS OTHERWISE LAWFULLY REMOVED, SHALL CONTINUE IN**
 23 **OFFICE UNTIL THE NEXT GENERAL ELECTION AFTER THE END OF THE ELECTED**
 24 **TERM OR UNTIL THE JUDGE ATTAINS THE AGE OF 70 YEARS, WHICHEVER OCCURS**
 25 **FIRST. CONTINUANCE OF THE JUDGE IN OFFICE IS THEN SUBJECT TO THE**
 26 **PROVISIONS OF ARTICLE IV, SECTION 5A OF THE MARYLAND CONSTITUTION, BUT**
 27 **IN NO EVENT SHALL ANY JUDGE CONTINUE IN OFFICE AFTER ATTAINING THE AGE**
 28 **OF 70 YEARS.**

29 **(C) EACH JUDGE OF A CIRCUIT COURT WHO IS IN OFFICE ON THE EFFECTIVE**
 30 **DATE OF THESE AMENDMENTS, BUT WHO HAS NOT BEEN ELECTED TO THAT OFFICE**
 31 **BY THE VOTERS, SHALL, WITHIN 15 DAYS AFTER THE EFFECTIVE DATE OF THESE**
 32 **AMENDMENTS, BE REAPPOINTED TO THAT OFFICE. CONTINUANCE OF THE JUDGE IN**
 33 **OFFICE IS THEN SUBJECT TO THE PROVISIONS OF ARTICLE IV, SECTION 5A OF THE**
 34 **MARYLAND CONSTITUTION, BUT IN NO EVENT SHALL ANY JUDGE CONTINUE IN**
 35 **OFFICE AFTER ATTAINING THE AGE OF 70 YEARS.**

36 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly
 37 determines that the amendment to the Maryland Constitution proposed by Section 1 of this

1 Act affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the Maryland
2 Constitution concerning local approval of constitutional amendments do not apply.

3 SECTION 3. AND BE IT FURTHER ENACTED, That the amendment to the
4 Maryland Constitution proposed by Section 1 of this Act shall be submitted to the qualified
5 voters of the State at the next general election to be held in November 2020 for adoption or
6 rejection pursuant to Article XIV of the Maryland Constitution. At that general election,
7 the vote on the proposed amendment to the Constitution shall be by ballot, and on each
8 ballot there shall be printed the words “For the Constitutional Amendment” and “Against
9 the Constitutional Amendment”, as now provided by law. Immediately after the election,
10 all returns shall be made to the Governor of the vote for and against the proposed
11 amendment, as directed by Article XIV of the Maryland Constitution, and further
12 proceedings had in accordance with Article XIV.