

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 847

(Senators Miller and Jennings)

Judicial Proceedings

Judiciary

Judges - Mandatory Retirement Age

This proposed constitutional amendment, if approved by the voters at the next general election, would raise the mandatory retirement age for judges from age 70 to 73 for judges who are appointed or reappointed *after* the constitutional amendment is adopted.

Fiscal Summary

State Effect: Potential decrease in State pension liabilities and employer contributions beginning in FY 2019, but a reliable estimate cannot be made. If approved by the voters, the proposed constitutional amendment would apply only to judges appointed or reappointed following the Governor's proclamation that the amendment has been approved, which would likely occur in late November 2016. To the extent that the proposed amendment causes some judges to work past the age of 70, it may reduce State pension liabilities and contributions due to deferred retirement payments.

Local Effect: It is assumed that the potential for increased costs to notify voters of any constitutional amendments proposed by the General Assembly, and to include any proposed constitutional amendments on the ballot at the next general election, will have been anticipated in local boards of elections' budgets.

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. There are exceptions that allow former circuit court judges in Montgomery and Harford 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; they may be reappointed by the Governor to successive terms.

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 must be reappointed by the Governor and may face another contested election to remain on the bench.

Judicial Compensation Commission

In 1980, the General Assembly created the Judicial Compensation Commission in statute. Under current law, the commission is charged with reviewing judicial salaries and pensions and making recommendations every four years, as of September 1, 2013. A joint resolution incorporating the commission's salary recommendations must be introduced in each house of the General Assembly by the fifteenth day of the session following the commission's proposals. The General Assembly may amend the joint resolution to decrease any salary recommendations but may not increase them. Judicial salaries may not be reduced below current levels. The joint resolution takes effect if the General Assembly fails to adopt it within 50 calendar days of its introduction.

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 five 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, 2014, there were 301 active members of JRS. Their average age is 57.7, and their average service is 8.9 years.

State Fiscal Effect: The proposed 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 amendment has no direct effect on the State's judicial payroll.

For current judges, the bill affects only those whose term ends *after* November 2016 (when the amendment would be approved by voters) and *before* they turn 70. Assuming these individuals are reappointed, they would be eligible to continue serving as judges until age 73 and earn additional service credit in JRS if they have not already earned the maximum 16 years allowed. Thus, the bill only has a fiscal effect 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 2, 2016 general election. Assuming it takes three weeks to certify the election results and have the Governor issue a proclamation, the amendment would take effect November 22, 2016. Current judges who turn 70 before they are *eligible* for reappointment (*i.e.*, before their terms expire) are *not* affected, even if their seventieth birthday occurs after the proclamation because the amendment only applies to those who have been *reappointed* after it is approved, not to those who turn 70 after it is approved. The Administrative Office of the Courts provided the age and term expiration date for each of the 297 sitting judges. Using this information, the Department of Legislative Services (DLS) has determined that 187 of the 297 sitting judges would be eligible to remain on the bench until they turn 73, if they are reappointed and, in the case of appellate and circuit

court judges, reelected. This includes six judges who would have to be reappointed twice in order to reach age 73. Other sitting judges are not eligible to remain on the bench until age 73 for the following reasons (the total number of judges exceeds 110 because some judges are ineligible for multiple reasons):

- 88 sitting judges turn 70 in their current term and, therefore, are not affected by the bill.
- 13 sitting judges turn 70 before the amendment is assumed to take effect, so they are subject to mandatory retirement and are not affected by the bill; and
- 22 sitting judges' terms expire before the amendment is assumed to be effective. If they are reappointed/reelected, they reach age 70 during their next term, so they are not affected by the bill.

DLS notes that 16 circuit and appellate court judges are subject to elections on November 2, 2016. The Administrative Office of the Courts advises that, at least in the case of the circuit court judges, they are newly appointed and subject to their first contested election. The office also advises that an election does not constitute an "appointment" or "reappointment," and that the 15-year terms for circuit court judges begin after their election, not their initial appointment date. Thus, the status of these individuals is not clear under the bill.

Even with the assumption that all current judges are reappointed, a reliable estimate of the bill's effect on pension liabilities and contribution rates is not feasible. DLS's consulting actuary has information on the age and years of service for each JRS member, but the data cannot be linked to the data provided by the Administrative Office of the Courts because the latter does not include the names or identifying information of the individual judges. Therefore, the actuary cannot determine whether a judge who is eligible to work until age 73 under the bill will also earn additional service credit (if that judge is not projected to reach the maximum 16 years of service before turning 70). In the absence of this information, an actuarial analysis of the bill's effect on State pension liabilities and contributions is not feasible.

However, for an earlier version of this bill, the consulting actuary 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 because they are working longer. Therefore, there is likely a net savings to the State in the form of reduced pension liabilities and employer contributions. Given the timing of the election at which the proposed constitutional amendment would be approved and of 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 2019.

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 amendment causes future judges to work past the age of 70, it likely reduces future State pension liabilities and contributions due to deferred retirements.

State costs of printing ballots may increase to the extent inclusion of the proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). However, it is assumed that the potential for such increased costs will have been anticipated in the State Board of Elections' budget. Pursuant to Chapter 564 of 2001, the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

Local Fiscal Effect: Local boards of elections' printing and mailing costs may increase to include information on the proposed constitutional amendment with specimen ballots mailed to voters prior to the next general election and to include the proposed amendment on ballots. It is assumed, however, that the potential for such increased costs will have been anticipated in local boards of elections' budgets.

Additional Information

Prior Introductions: HB 726 of 2014, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken on the bill.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Cheiron, Maryland State Retirement Agency, Department of Legislative Services

Fiscal Note History: First Reader - March 16, 2015
md/rhh Revised - Senate Third Reader - April 1, 2015

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510