

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 75 (Delegate Qi)
 Judiciary and Ways and Means

Election Law – Circuit Court Judges – Nonpartisan Elections

This bill establishes a process for nomination and election of circuit court judges in which all registered voters are eligible to vote in a primary election to nominate candidates for circuit court judge.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$45,000 in FY 2022 and by at least \$32,500 in FY 2024 and future years in which a primary election occurs. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	45,000	0	32,500	0	32,500
Net Effect	(\$45,000)	\$0	(\$32,500)	\$0	(\$32,500)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local government expenditures increase, collectively, by at least \$45,000 in FY 2022 and by at least \$32,500 in FY 2024 and future years in which a primary election occurs. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Circuit court judges must be elected on a nonpartisan basis. In a primary election to nominate candidates for circuit court judge, any registered voter of the county, regardless of party affiliation or lack thereof, is eligible to vote. Candidates for election as

a circuit court judge must, without party designation or regard to party affiliation (1) file certificates of candidacy; (2) be certified to be on the ballot; (3) appear on the ballot; (4) be voted on; and (5) be nominated and elected.

In each year that one or more circuit court judges are to be elected, candidates must be nominated at the primary election. The candidates, equal in number to twice the number of offices to be filled, who receive the largest number of votes in the primary election must be the nominated candidates. If two or more candidates each receive the lowest number of votes necessary to qualify for nomination, creating a tie for the last nomination for the office to be filled, each must be a nominated candidate. The bill specifies procedures for circumstances in which a candidate or nominee dies, becomes disqualified, or declines the nomination.

In a general election for circuit court judge, a voter may vote for a number of nominees equal to the number of circuit court judges to be elected. The nominees, equal in number to the number of offices to be filled, who receive the largest number of votes in a general election are declared elected. If two or more nominees each receive the lowest number of votes necessary to qualify for election, creating a tie for the last office to be filled, the office is considered vacant and must be filled as if the vacancy occurred during the term of office.

Current Law: Article IV of the Maryland Constitution specifies that vacancies in the office of a circuit court judge be filled by gubernatorial appointment until the election and qualification of a successor at the first general election more than 1 year after the occurrence of the vacancy. Vacancies created by the expiration of a judge's 15-year term are to be filled by a successor that is elected at the first biennial general election for representatives in Congress.

Candidates for circuit court judge are typically nominated for the general election by the Democratic and Republican parties in the primary election and will "cross-file," appearing on both the Democratic and Republican primary election ballots, needing to win on only one. In addition to nomination through the primary election, circuit court judges also have the option of being nominated for the general election by a third party or by petition. Their names appear on general election ballots without a party label or other distinguishing mark or location that might indicate party affiliation.

For additional information, please see the **Appendix – Judicial Appointments and Elections**.

State Fiscal Effect: General fund expenditures increase by at least \$45,000 in fiscal 2022 and by \$32,500 in fiscal 2024 and future years in which a primary election occurs, for one-time programming costs and annual costs for additional in-person and mail-in ballots needed for registered voters not affiliated with the Democratic or Republican parties who

would not otherwise be eligible to vote in a given primary election in the absence of the bill. The estimate assumes that, on average, at least 20% of the registered voters in the State who are not affiliated with the Democratic or Republican parties become eligible to vote in a primary election as a result of the bill. The estimate reflects the State Board of Elections' share of the costs, which are shared 50/50 with the local boards of elections.

Local Fiscal Effect: Local government expenditures increase, collectively, by at least \$45,000 in fiscal 2022 and by \$32,500 in fiscal 2024 and future years in which a primary election occurs, reflecting the local boards of elections' share of the costs described above. The costs for local boards of elections also increase to send additional specimen ballots prior to primary elections, to voters who would not otherwise be eligible to vote in a given primary election in the absence of the bill. In Baltimore City, for example, specimen ballot costs may increase by approximately \$12,000 for a given primary election, based on past specimen ballot cost information provided by the city.

Additional Information

Prior Introductions: SB 130 of 2018, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. SB 744 of 2017, also a similar bill, was referred to the Senate Judicial Proceedings Committee but was subsequently withdrawn.

Designated Cross File: None.

Information Source(s): State Board of Elections; Baltimore City; Harford, Montgomery, and Talbot counties; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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rh/hlb

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Appendix – Judicial Appointments and Elections

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. 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 makes the appointment from the list.

For both appellate courts, these appointments must be confirmed by the Senate, and the judge holds the office until the next statewide general election that occurs at least 1 year after 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. Appellate judges frequently receive 80% or more of the vote in favor of retention. For the District Court, judges are appointed by the Governor and serve 10-year terms upon confirmation by the Senate, without any required judicial election.

Upon a circuit court vacancy, the Governor must appoint an individual who will hold the office until the first statewide general election that follows the occurrence of the vacancy, or until the first such general election that occurs at least 1 year after the opening of the vacancy, as specified. Unlike the process for other judges in the State, voters in each county (or Baltimore City) elect their respective circuit court judges to 15-year terms in contested elections in which any challenger who meets the minimum constitutional requirements may run.

Thus, 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, and it is only at the circuit court level where an individual (*i.e.*, a successful challenger) may become a judge without a gubernatorial appointment and without being screened and recommended by a judicial nominating commission. In the 2020 general election, four nonincumbent challengers won circuit court seats in Charles, Howard, and Prince George's counties. Prior to that election, only nine appointed incumbents had been defeated since 1986.

According to a National Center for State Courts [compendium](#), the other 49 states use a variety of methods for selecting judges across all levels of service – from partisan or nonpartisan election of all judges, to gubernatorial and/or legislative appointment of all judges, to various combinations thereof.