

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 152 (Delegate Stewart)
 Health and Government Operations

Public Advocate Act of 2022

This proposed constitutional amendment, if approved by the voters at the next general election, establishes an Office of the Public Advocate to (1) act as an independent liaison between the citizens of Maryland and the State government; (2) facilitate democratic engagement in State government; and (3) receive, respond to, and investigate ethics complaints against State officials in the Executive, Legislative, and Judicial branches of State government, as specified. The Public Advocate is elected by the qualified voters of the State every four years beginning with the November 2026 statewide general election. The proposed constitutional amendment specifies the qualifications, powers, and duties of the Public Advocate, procedures for the election and removal of the Public Advocate, and procedures for filling a vacancy in the office of Public Advocate. If vacancies in the offices of Governor and Lieutenant Governor exist at the same time, the Public Advocate must succeed to the office of Governor for the remainder of the term, as specified.

Fiscal Summary

State Effect: General fund expenditures increase by as much as \$20,000 in FY 2026 and by \$367,600 in FY 2027, based on the assumptions discussed below. Future years reflect annualization, inflation, and elimination of one-time costs. Revenues are not affected.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	20,000	367,600	676,000	697,700	718,100
Net Effect	(\$20,000)	(\$367,600)	(\$676,000)	(\$697,700)	(\$718,100)

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

Local Effect: Local government finances are not expected to be materially affected, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary:

Qualifications, Election, and Removal of the Public Advocate

To be eligible for the office of Public Advocate, a person must be a citizen and qualified voter of the State and have resided in the State for at least one year preceding the date of election. All elections for Public Advocate must be certified and returned to the Governor, who must (1) decide on the election and qualification of the person returned; (2) in the case of a tie between two or more persons, designate which person qualifies as Public Advocate; and (3) administer the oath of office to the person elected, as specified. The Public Advocate serves a term of four years from the time of election and qualification, is eligible for reelection to the office, and is subject to removal for incompetency, willful neglect of duty, or misdemeanor in office, on conviction in a court of law.

Powers and Duties of the Public Advocate

As discussed above, the Public Advocate must (1) act as an independent liaison between the citizens of Maryland and the State government; (2) facilitate democratic engagement in State government; and (3) receive, respond to, and independently investigate ethics complaints against State officials in the Executive, Legislative, and Judicial branches of State government. The Public Advocate must collaborate with the appropriate enforcement entities in enforcing ethics complaints and advocate for constructive, systemic solutions to ethics complaints.

The Public Advocate may (1) convene public forums in the spirit of democratic voice and participation; (2) explore creative citizen engagement, including technology-enabled civic engagement, digital citizen complaint and comment tools, citizen assemblies, government modernization, and streamlining; (3) issue reports; (4) hold press conferences; and (5) conduct public awareness campaigns. In addition, the Public Advocate must have and perform any other duties, possess any other powers, and appoint the number of deputies or assistants as the General Assembly may prescribe by law.

Compensation

The Public Advocate must receive an annual salary as the General Assembly may prescribe by law but may not otherwise receive any fees, perquisites, or rewards for the performance of any official duty.

Vacancy in the Office of Public Advocate

In the case of vacancy in the office of Public Advocate, the Governor must appoint an individual to fill the vacancy from a list of names submitted by the State central committee of the political party, if any, with which the vacating Public Advocate had been affiliated at the time of the Public Advocate's last election or appointment, as specified. The Governor must make the appointment within 15 days after names are submitted by the specified central committee. If names are not submitted by the appropriate State central committee within 30 days after the occurrence of the vacancy, the Governor must appoint, within another period of 15 days, any qualified individual affiliated with the political party of the vacating Public Advocate, as specified. If the vacating Public Advocate was not affiliated with a political party at the time of last election or appointment, the Governor must appoint any qualified individual within 15 days after the occurrence of the vacancy.

An individual appointed to fill a vacancy in the office of Public Advocate must serve the remainder of the term if the vacancy occurs within 21 days of the candidacy filing deadline for the regular statewide election held in the second year of the term. However, if the vacancy occurs at least 21 days before the filing deadline, the Governor must immediately declare special primary and general elections, to be held at the same time as the regular primary and general elections, to elect a successor.

Succession to the Office of Governor in the Event of Specified Vacancies

If vacancies in the offices of Governor and Lieutenant Governor exist at the same time, the Public Advocate must succeed to the office of Governor for the remainder of the term. When the Public Advocate succeeds to the office of Governor, he or she has the title, powers, duties, and emoluments of the office. If vacancies in the offices of Governor, Lieutenant Governor, and Public Advocate exist at the same time, the General Assembly must convene to elect a Governor in accordance with existing procedures.

Current Law: State law does not provide for an office of public advocate, as contemplated in the proposed constitutional amendment.

The State Ethics Commission is generally responsible for administering the provisions of the Maryland Public Ethics Law, periodically reviewing the adequacy of public ethics laws, and providing trainings on the Ethics Law. The Joint Committee on Legislative Ethics and the Commission on Judicial Disabilities administer specified provisions of the Ethics Law as they apply to members of the General Assembly and State officials of the Judicial Branch, respectively. The State Prosecutor is authorized to investigate criminal offenses under the Ethics Law, as well as criminal offenses under the State election laws; State bribery law violations involving public officials or employees; misconduct in office by

public officials or employees; and related extortion, perjury, or obstruction of justice, as specified.

Succession in the Event of Vacancy in the Office of Governor

Article II, Section 6 of the Maryland Constitution establishes procedures that apply in the event of a vacancy in the office of Governor or Lieutenant Governor. When a vacancy occurs in the office of Governor, the Lieutenant Governor must succeed to the office of Governor for the remainder of the term. If vacancies in the offices of Governor and Lieutenant Governor exist at the same time, the General Assembly must convene in joint session to elect a Governor, as specified. (*Under the bill*, the General Assembly must convene to elect a Governor if vacancies in the offices of Governor, Lieutenant Governor, and *Public Advocate* exist at the same time.) The President of the Senate must serve as acting Governor until the newly elected Governor has qualified.

When the Lieutenant Governor or a person elected by the General Assembly succeeds to the office of Governor, he or she has the title, powers, duties, and emoluments of the office. However, when the Lieutenant Governor or the President of the Senate serves as *acting* Governor, the acting Governor has only the powers and duties of the office, as specified.

State Expenditures:

State Board of Elections

The State Board of Elections (SBE) advises that the proposed constitutional amendment, if approved by the voters, necessitates programming changes to the Agency Election Management System (AEMS) and the Maryland Voter Registration, Candidacy, and Election Management System (MDVOTERS), due to the establishment of a new statewide elected office. SBE estimates total, one-time costs of \$15,000 to \$20,000. It is assumed that this work is completed in fiscal 2026, in advance of candidacy filing deadlines for the 2026 statewide general election. Thus, general fund expenditures for SBE increase by as much as \$20,000 in fiscal 2026. It is assumed, for purposes of this fiscal and policy note, that these costs are incurred by SBE. However, to the extent that a portion of these costs is shared with the local boards of elections, SBE expenditures may be less.

General fund expenditures for SBE potentially increase further in fiscal 2026, 2027, and/or any future fiscal year in which a gubernatorial primary or general election occurs, to the extent that the addition of a new statewide elected office to the ballot results in increased ballot printing costs. The State shares ballot printing costs with the counties. Any such impact on ballot printing costs cannot be reliably predicted. However, for purposes of this fiscal and policy note, it is assumed that any impact on ballot printing costs does not materially affect State elections expenditures.

Office of the Public Advocate

As noted above, the proposed constitutional amendment specifies that the Public Advocate must receive an annual salary and may appoint deputies or assistants as the General Assembly may prescribe by law. It is assumed, for purposes of this fiscal and policy note, that the Public Advocate earns an annual salary that is comparable to the annual salaries for other statewide constitutional officers (*e.g.*, the Lieutenant Governor, the Attorney General, the Comptroller, and the Treasurer). In addition, it is assumed that the Public Advocate must employ a small staff, including an assistant Public Advocate, to assist the Public Advocate in carrying out his or her duties as set forth under the proposed constitutional amendment.

Thus, general expenditures increase by \$367,646 in fiscal 2027. This estimate assumes that (1) the first elected Public Advocate takes office in January 2027 and (2) the Public Advocate’s annualized salary in the first year is \$165,000 (based on the Governor’s Salary Commission’s most recent salary recommendations for the offices of Lieutenant Governor, Attorney General, Treasurer, and Comptroller). In addition, this estimate reflects the cost of hiring (1) an assistant Public Advocate; (2) two investigators to assist in investigating ethics complaints received by the Office of the Public Advocate; (3) an administrative specialist; and (4) one half-time assistant Attorney General to support the Office of the Public Advocate. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	5.5
Salaries and Fringe Benefits	\$325,429
Operating Expenses	<u>42,217</u>
Total FY 2027 Office of the Public Advocate Expenditures	\$367,646

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Local Expenditures: As noted above, the bill necessitates changes to AEMS and MDVOTERS totaling up to an estimated \$20,000. This fiscal and policy note assumes that these costs are incurred by SBE; however, to the extent that a portion of the costs is shared with the local boards of elections, expenditures for the local boards increase minimally in fiscal 2026.

In addition, expenditures for local boards of elections potentially increase in fiscal 2026, 2027, and/or any future fiscal year in which a gubernatorial primary or general election occurs, to the extent that the addition of a new statewide elected office to the ballot results in increased ballot printing costs. Any such impact cannot be reliably predicted. However,

for purposes of this fiscal and policy note, it is assumed that any impact on ballot printing costs does not materially affect expenditures for local boards of elections.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Governor's Office; Judiciary (Administrative Office of the Courts); State Prosecutor's Office; Maryland State Board of Elections; State Ethics Commission; Department of Legislative Services

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