

HOUSE BILL 1402

D1

CONSTITUTIONAL AMENDMENT

0lr1716
CF SB 703

By: **Delegates Barron and Bartlett**

Introduced and read first time: February 7, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Circuit Court Judges – Selection and Tenure**

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; requiring Senate confirmation of individuals
6 appointed by the Governor to the office of a judge of a circuit court; requiring a
7 certain judicial nominating commission or body to reflect a certain demographic
8 diversity; providing for contested elections following an appointment to fill a vacancy
9 in the office of a judge of a circuit court under certain circumstances; providing for
10 the reappointment of certain judges; providing for a transitional period under which
11 the terms of certain amendments are to become effective; making stylistic changes;
12 generally relating to the selection, election, appointment, and tenure of judges of the
13 circuit courts; and submitting the amendment to the qualified voters of the State for
14 their adoption or rejection.

15 BY proposing a repeal of the Maryland Constitution
16 Article IV – Judiciary Department
17 Section 3 and 5

18 BY proposing an addition to the Maryland Constitution
19 Article IV – Judiciary Department
20 Section 3, 5, and 5B

21 BY proposing an addition to the Maryland Constitution
22 Article XVIII – Provisions of Limited Duration
23 Section 6

24 Preamble

25 WHEREAS, Bringing diverse experiences and perspectives to bear allows judges to
26 make better informed decisions and increases public confidence in their rulings; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



WHEREAS, Diversity in the courts is a means to protect and preserve the trust in the judiciary; and

WHEREAS, Having a diverse bench enhances impartiality by providing more varied experiences and perspectives from which to draw on in interpreting and applying the law; and

WHEREAS, The membership of a judicial nominating commission for a county should reflect the diversity of that county; and

WHEREAS, A judicial nominating commission should make recommendations to the circuit court that reflect the diversity of the county; and

WHEREAS, The governor's recommendation for an appointment to the circuit court in each county should reflect the diversity of the county; and

WHEREAS, The Executive Nominating Commission should nominate a candidate for circuit court to the full Senate that reflects the diversity of a county; and

WHEREAS, Eighty percent of the Senate should confirm only a candidate for the circuit court that creates a diverse court reflecting the diversity of a county; now, therefore,

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

Article IV – Judiciary Department

[3.

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

3.

1 (A) ON THE OCCURRENCE OF A VACANCY IN THE OFFICE OF A JUDGE OF A
2 CIRCUIT COURT, WHETHER BY DEATH, RESIGNATION, REMOVAL, RETIREMENT,
3 DISQUALIFICATION BY REASON OF AGE, REJECTION BY THE VOTERS OF AN
4 INCUMBENT, THE CREATION OF THE OFFICE OF A JUDGE, OR OTHERWISE, THE
5 GOVERNOR, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, SHALL
6 APPOINT AN INDIVIDUAL WHO IS QUALIFIED TO FILL THE OFFICE.

7 (B) CONFIRMATION BY THE SENATE SHALL BE MADE ON A MAJORITY VOTE
8 OF ALL MEMBERS OF THE SENATE.

9 (C) (1) A CIRCUIT COURT JUDGE APPOINTED BY THE GOVERNOR AND
10 CONFIRMED BY THE SENATE MAY TAKE OFFICE BY TAKING THE PRESCRIBED OATH
11 OF OFFICE WITHIN 30 DAYS AFTER CONFIRMATION.

12 (2) IF A CIRCUIT COURT JUDGE APPOINTED BY THE GOVERNOR AND
13 CONFIRMED BY THE SENATE FAILS TO TAKE OFFICE WITHIN 30 DAYS AFTER
14 CONFIRMATION, THE OFFICE SHALL BE DEEMED VACANT.

15 (D) A CIRCUIT COURT JUDGE APPOINTED BY THE GOVERNOR AND
16 CONFIRMED BY THE SENATE BY A VOTE OF AT LEAST 80% OF ALL MEMBERS WHO
17 TAKES OFFICE WITHIN 30 DAYS AFTER CONFIRMATION SHALL HOLD THE OFFICE
18 FOR A TERM OF 15 YEARS FROM THE DATE THAT THE JUDGE TOOK OFFICE AND
19 UNTIL THE JUDGE'S SUCCESSOR IS APPOINTED OR ELECTED, AS APPLICABLE, AND
20 QUALIFIED, OR UNTIL THE JUDGE ATTAINS THE AGE OF 70 YEARS, WHICHEVER
21 OCCURS FIRST.

22 (E) (1) IF A CIRCUIT COURT JUDGE WHO WAS CONFIRMED BY THE
23 SENATE BY A VOTE OF AT LEAST A MAJORITY BUT LESS THAN 80% OF ALL MEMBERS
24 OF THE SENATE TAKES OFFICE FOLLOWING CONFIRMATION BY THE SENATE, THE
25 CONTINUANCE IN OFFICE OF THE JUDGE IS SUBJECT TO APPROVAL OR REJECTION
26 BY THE REGISTERED VOTERS OF THE CITY OR COUNTY FROM WHICH THE JUDGE WAS
27 APPOINTED AT THE NEXT GENERAL ELECTION FOLLOWING THE EXPIRATION OF 1
28 YEAR FROM THE DATE THAT THE JUDGE TOOK OFFICE.

29 (2) THE APPROVAL OR REJECTION OF THE APPOINTED JUDGE BY THE
30 REGISTERED VOTERS SHALL BE BY CONTESTED ELECTION IN WHICH OTHER
31 CANDIDATES WHO ARE QUALIFIED FOR THE OFFICE OF CIRCUIT COURT JUDGE MAY
32 FILE AS CANDIDATES.

33 (3) IF THE APPOINTED JUDGE WINS ELECTION IN THE GENERAL
34 ELECTION, THE JUDGE SHALL SERVE FOR A TERM OF 15 YEARS FROM THE DATE
35 THAT THE JUDGE TOOK OFFICE AND UNTIL THE JUDGE'S SUCCESSOR IS APPOINTED
36 OR ELECTED, AS APPLICABLE, AND QUALIFIED, OR UNTIL THE JUDGE ATTAINS THE

1 AGE OF 70 YEARS, WHICHEVER OCCURS FIRST.

2 (4) IF THE APPOINTED JUDGE FAILS TO WIN ELECTION IN THE
3 GENERAL ELECTION, THE PREVAILING CANDIDATE SHALL SERVE AS JUDGE FOR A
4 TERM OF 15 YEARS FROM THE DATE THAT THE ELECTED JUDGE TOOK OFFICE AND
5 UNTIL THE ELECTED JUDGE'S SUCCESSOR IS APPOINTED OR ELECTED, AS
6 APPLICABLE, AND QUALIFIED, OR UNTIL THE JUDGE ATTAINS THE AGE OF 70 YEARS,
7 WHICHEVER OCCURS FIRST.

8 (F) (1) IF THE 15-YEAR TERM OF A CIRCUIT COURT JUDGE EXPIRES
9 BEFORE THE JUDGE ATTAINS THE AGE OF 70 YEARS, THAT JUDGE MAY BE
10 REAPPOINTED BY THE GOVERNOR FOR ANOTHER 15-YEAR TERM, OR UNTIL THE
11 JUDGE ATTAINS THE AGE OF 70 YEARS, WHICHEVER OCCURS FIRST.

12 (2) THE REAPPOINTMENT OF A JUDGE UNDER THIS SUBSECTION IS
13 NOT SUBJECT TO CONFIRMATION BY THE SENATE.

14 [5.

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

27 5.

28 IN CASE OF THE INABILITY OF ANY CIRCUIT COURT JUDGE TO DISCHARGE THE
29 JUDGE'S DUTIES WITH EFFICIENCY, BY REASON OF CONTINUED SICKNESS OR OF
30 PHYSICAL OR MENTAL INFIRMITY, IT SHALL BE IN THE POWER OF THE GENERAL
31 ASSEMBLY, TWO-THIRDS OF THE MEMBERS OF EACH HOUSE CONCURRING, WITH
32 THE APPROVAL OF THE GOVERNOR TO RETIRE THE JUDGE FROM OFFICE.

33 5B.

34 IF THE GOVERNOR APPOINTS A JUDICIAL NOMINATING COMMISSION OR
35 SIMILAR BODY TO PROPOSE NOMINEES FOR APPOINTMENT TO A COURT, THE

COMMISSION OR BODY SHALL REFLECT THE DEMOGRAPHIC DIVERSITY OF THE STATE OR THE JUDICIAL CIRCUIT FOR WHICH THE COMMISSION OR BODY IS CHARGED WITH PROPOSING NOMINEES.

Article XVIII – Provisions of Limited Duration

6.

(A) FOR THE PURPOSE OF IMPLEMENTING THE AMENDMENTS TO ARTICLE IV OF THE MARYLAND CONSTITUTION PROPOSED BY SENATE BILL ____ OF 2020 (0LR1405) CONCERNING THE SELECTION AND TENURE OF CIRCUIT COURT JUDGES, THE FOLLOWING PROVISIONS SHALL GOVERN. IN ACCORDANCE WITH ARTICLE XIV, SECTION 1A OF THE MARYLAND CONSTITUTION, THIS SECTION SHALL EXPIRE WHEN ALL OF THE JUDGES OF THE CIRCUIT COURTS HAVE COMPLETED ALL OF THE TERMS FOR WHICH THE JUDGES ARE RETAINED IN OFFICE UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION OR HAVE VACATED THEIR OFFICES FOR ANY REASON.

(B) EACH JUDGE OF A CIRCUIT COURT WHO IS IN OFFICE FOR AN ELECTED TERM ON THE EFFECTIVE DATE OF THESE AMENDMENTS, UNLESS THE JUDGE DIES, RESIGNS, RETIRES, OR IS OTHERWISE LAWFULLY REMOVED, SHALL CONTINUE IN OFFICE UNTIL THE JUDGE'S SUCCESSOR IS APPOINTED OR ELECTED, AS APPLICABLE, AND QUALIFIED OR UNTIL THE JUDGE ATTAINS THE AGE OF 70 YEARS, WHICHEVER OCCURS FIRST. CONTINUANCE OF THE JUDGE IN OFFICE IS THEN SUBJECT TO THE PROVISIONS OF ARTICLE IV, SECTION 3 OF THE MARYLAND CONSTITUTION, BUT IN NO EVENT SHALL ANY JUDGE CONTINUE IN OFFICE AFTER ATTAINING THE AGE OF 70 YEARS.

(C) EACH JUDGE OF A CIRCUIT COURT WHO IS IN OFFICE ON THE EFFECTIVE DATE OF THESE AMENDMENTS, BUT WHO HAS NOT BEEN ELECTED TO THAT OFFICE BY THE VOTERS, SHALL CONTINUE TO BE GOVERNED BY ARTICLE IV, SECTIONS 3 AND 5 OF THE MARYLAND CONSTITUTION, AS IN EFFECT BEFORE THE RATIFICATION OF THE AMENDMENTS TO ARTICLE IV OF THE MARYLAND CONSTITUTION PROPOSED BY SENATE BILL ____ OF 2020 (0LR1405). IF THE JUDGE IS ELECTED TO THE OFFICE, THE JUDGE SHALL CONTINUE IN OFFICE UNTIL THE JUDGE'S SUCCESSOR IS APPOINTED OR ELECTED, AS APPLICABLE, AND QUALIFIED OR UNTIL THE JUDGE ATTAINS THE AGE OF 70 YEARS, WHICHEVER OCCURS FIRST. CONTINUANCE OF THE JUDGE IN OFFICE AT THE END OF THE ELECTED TERM IS THEN SUBJECT TO THE PROVISIONS OF ARTICLE IV, SECTION 3 OF THE MARYLAND CONSTITUTION, BUT IN NO EVENT SHALL ANY JUDGE CONTINUE IN OFFICE AFTER ATTAINING THE AGE OF 70 YEARS.

SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly determines that the amendment to the Maryland Constitution proposed by this Act affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the Maryland

1 Constitution concerning local approval of constitutional amendments do not apply.

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