

# HOUSE BILL 182

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CONSTITUTIONAL AMENDMENT

9lr1252

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By: **Delegates Cardin, Ivey, Jalisi, and Kerr**

Introduced and read first time: January 23, 2019

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Judges – Mandatory Retirement Age**

3 FOR the purpose of proposing an amendment to the Maryland Constitution altering the  
4 mandatory retirement age for certain judges under certain circumstances; repealing  
5 certain obsolete provisions; making certain technical corrections; making certain  
6 stylistic changes; proposing an addition to the Maryland Constitution to provide for  
7 the application of certain amendments to the Maryland Constitution; and submitting  
8 these amendments to the qualified voters of the State for their adoption or rejection.

9 BY proposing an amendment to the Maryland Constitution  
10 Article IV – Judiciary Department  
11 Section 3, 3A, 5A, and 41D

12 BY proposing a repeal of the Maryland Constitution  
13 Article IV – Judiciary Department  
14 Section 18B

15 BY proposing an addition to the Maryland Constitution  
16 Article IV – Judiciary Department  
17 Section 18B

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

21 **Article IV – Judiciary Department**

22 3.

23 (A) Except for the Judges of the District Court, the Judges of the several Courts

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 other than the Court of Appeals or any intermediate courts of appeal shall, subject to the  
2 provisions of Section 5 of this Article of the Constitution, be elected in Baltimore City and  
3 in each county, by the qualified voters of the city and of each county, respectively, all of the  
4 said Judges to be elected at the general election to be held on the Tuesday after the first  
5 Monday in November, as now provided for in the Constitution.

6 (B) Each of the said Judges shall hold [his] **THE** office for the term of fifteen years  
7 from the time of [his] **THE JUDGE'S** election, and until [his] **THE JUDGE'S** successor is  
8 elected and qualified, or until [he] **THE JUDGE** shall have attained the age of [seventy]  
9 **SEVENTY-THREE** years, whichever may first happen, and be reeligible thereto until [he]  
10 **THE JUDGE** shall have attained the age of [seventy] **SEVENTY-THREE** years, and not  
11 after.

12 (C) In case of the inability of any of said Judges to discharge [his] **THE JUDGE'S**  
13 duties with efficiency, by reason of continued sickness, or of physical or mental infirmity,  
14 it shall be in the power of the General Assembly, two-thirds of the members of each House  
15 concurring, with the approval of the Governor to retire said Judge from office.

16 3A.

17 (a) (1) Except as provided in paragraph (2) of this subsection, any former  
18 judge, except a former judge of the Orphans' Court, may be assigned by the Chief Judge of  
19 the Court of Appeals, upon approval of a majority of the court, to sit temporarily in any  
20 court of this State, except an Orphans' Court, as provided by law.

21 (2) (i) A retired judge of the Circuit Court for Montgomery County that  
22 sits as the Orphans' Court for Montgomery County may be assigned by the Chief Judge of  
23 the Court of Appeals, upon approval of a majority of the Court of Appeals, to do an act that  
24 a judge of the Orphans' Court for Montgomery County is authorized to perform.

25 (ii) A retired judge of the Circuit Court for Harford County that sits  
26 as the Orphans' Court for Harford County may be assigned by the Chief Judge of the Court  
27 of Appeals, upon approval of a majority of the Court of Appeals, to do an act that a judge of  
28 the Orphans' Court for Harford County is authorized to perform.

29 (b) The provisions of this section apply, notwithstanding provisions appearing  
30 elsewhere in this Article pertaining to retirement of judges upon attaining age [70] **73**.

31 5A.

32 (a) A vacancy in the office of a judge of an appellate court, whether occasioned by  
33 the death, resignation, removal, retirement, disqualification by reason of age, or rejection  
34 by the voters of an incumbent, the creation of the office of a judge, or otherwise, shall be  
35 filled as provided in this section.

36 (b) Upon the occurrence of a vacancy the Governor shall appoint, by and with the

1 advice and consent of the Senate, a person duly qualified to fill said office who shall hold  
2 the same until the election for continuance in office as provided in subsections (c) and (d).

3 (c) The continuance in office of a judge of the Court of Appeals is subject to  
4 approval or rejection by the registered voters of the appellate judicial circuit from which  
5 [he] **THE JUDGE** was appointed at the next general election following the expiration of one  
6 year from the date of the occurrence of the vacancy which [he] **THE JUDGE** was appointed  
7 to fill, and at the general election next occurring every ten years thereafter.

8 (d) The continuance in office of a judge of the Court of Special Appeals is subject  
9 to approval or rejection by the registered voters of the geographical area prescribed by law  
10 at the next general election following the expiration of one year from the date of the  
11 occurrence of the vacancy which [he] **THE JUDGE** was appointed to fill, and at the general  
12 election next occurring every ten years thereafter.

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

19 (f) An appellate court judge shall retire when [he] **THE JUDGE** attains [his  
20 seventieth] **THE JUDGE'S SEVENTY-THIRD** birthday.

21 (g) A member of the General Assembly who is otherwise qualified for  
22 appointment to judicial office is not disqualified by reason of [his] membership in a General  
23 Assembly which proposed or enacted any constitutional amendment or statute affecting the  
24 method of selection. Continuance in office, or retirement or removal of a judge, the creation  
25 or abolition of a court, an increase or decrease in the number of judges of any court, or an  
26 increase or decrease in the salary, pension or other allowances of any judge.

27 [18B.

28 (a) For the purpose of implementing the amendments to this article, dealing with  
29 the selection and tenure of appellate court judges, the following provisions shall govern.

30 (b) Each judge of an appellate court who is in office for an elected term on the  
31 effective date of these amendments, unless he dies, resigns, retires, or is otherwise lawfully  
32 removed, shall continue in office until the general election next after the end of his elected  
33 term, or until his seventieth birthday, whichever first occurs. His continuance in office is  
34 then subject to the provisions of section 5A(c) and (d) of this article, applicable to judges of  
35 that court, but in no event shall any judge continue in office after his seventieth birthday.

36 (c) Each judge of a court specified in subsection (b) who is in office on the effective  
37 date of these amendments, but who has not been elected to that office by the voters, shall,

1 within fifteen days after the effective date of these amendments, be reappointed to that  
2 office. His continuance in office is then subject to the provisions of section 5A(c) and (d) of  
3 this article, applicable to judges of that court, but in no event shall any judge continue in  
4 office after his seventieth birthday.]

5 **18B.**

6 **(A) THE AMENDMENTS TO §§ 3, 3A, 5A, AND 41D OF THIS ARTICLE**  
7 **ALTERING THE MANDATORY RETIREMENT AGE OF JUDGES SHALL APPLY TO EACH**  
8 **JUDGE WHO:**

9 **(1) IS FIRST ELECTED OR APPOINTED TO OFFICE ON OR AFTER THE**  
10 **DATE ON WHICH THE GOVERNOR ISSUES A PROCLAMATION UNDER ARTICLE XIV, §**  
11 **1 OF THIS CONSTITUTION DECLARING THE AMENDMENTS TO BE ADOPTED; OR**

12 **(2) (I) IS IN OFFICE ON THE DATE ON WHICH THE GOVERNOR**  
13 **ISSUES A PROCLAMATION UNDER ARTICLE XIV, § 1 OF THIS CONSTITUTION**  
14 **DECLARING THE AMENDMENTS TO BE ADOPTED;**

15 **(II) WILL REACH THE AGE OF SEVENTY YEARS BEFORE THE**  
16 **JUDGE COMPLETES THE END OF THE JUDGE'S TERM; AND**

17 **(III) APPLIES FOR, AND IS GRANTED, AN EXTENSION BY THE**  
18 **GOVERNOR TO SERVE UNTIL THE JUDGE COMPLETES THE JUDGE'S TERM OR**  
19 **ATTAINS THE AGE OF SEVENTY-THREE YEARS, WHICHEVER OCCURS FIRST.**

20 **(B) THE GOVERNOR MAY EXTEND A JUDGE'S TERM FOR THE PURPOSE OF**  
21 **IMPLEMENTING SUBSECTION (A)(2) OF THIS SECTION.**

22 41D.

23 **(A) (1) The Governor, by and with the advice and consent of the Senate, shall**  
24 **appoint each judge of the District Court whenever for any reason a vacancy shall exist in**  
25 **the office.**

26 **(2) All hearings, deliberations, and debate on the confirmation of**  
27 **appointees of the Governor shall be public, and no hearings, deliberations or debate thereon**  
28 **shall be conducted by the Senate or any committee or subcommittee thereof in secret or**  
29 **executive session.**

30 **(3) Confirmation by the Senate shall be made upon a majority vote of all**  
31 **members of the Senate.**

32 **(4) A judge appointed by the Governor may take office upon qualification**  
33 **and before confirmation by the Senate, but shall cease to hold office at the close of the**

1 regular annual session of the General Assembly next following [his] **THE JUDGE'S**  
2 appointment or during which [he] **THE JUDGE** shall have been appointed by the Governor,  
3 if the Senate shall not have confirmed [his] **THE JUDGE'S** appointment before then.

4 **(B) (1)** Each judge appointed by the Governor and confirmed by the Senate  
5 shall hold the office for a term of ten years or until [he] **THE JUDGE** shall have attained  
6 the age of [seventy] **SEVENTY-THREE** years, whichever may first occur.

7 **(2)** If the ten year term of a judge shall expire before that judge shall have  
8 attained the age of [seventy] **SEVENTY-THREE** years, that judge shall be reappointed by  
9 the Governor, with the Senate's consent, for another ten year term or until [he] **THE JUDGE**  
10 shall have attained the age of [seventy] **SEVENTY-THREE** years, whichever may first  
11 occur.

12 **(C)** To the extent inconsistent herewith, the provisions of Sections 3 and 5 of this  
13 Article shall not apply to judges of the District Court.

14 **SECTION 2. AND BE IT FURTHER ENACTED,** That the General Assembly  
15 determines that the amendment to the Maryland Constitution proposed by Section 1 of this  
16 Act affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the Maryland  
17 Constitution concerning local approval of constitutional amendments do not apply.

18 **SECTION 3. AND BE IT FURTHER ENACTED,** That the amendment to the  
19 Maryland Constitution proposed by Section 1 of this Act shall be submitted to the qualified  
20 voters of the State at the next general election to be held in November 2020 for adoption or  
21 rejection pursuant to Article XIV of the Maryland Constitution. At that general election,  
22 the vote on the proposed amendment to the Constitution shall be by ballot, and on each  
23 ballot there shall be printed the words "For the Constitutional Amendment" and "Against  
24 the Constitutional Amendment", as now provided by law. Immediately after the election,  
25 all returns shall be made to the Governor of the vote for and against the proposed  
26 amendment, as directed by Article XIV of the Maryland Constitution, and further  
27 proceedings had in accordance with Article XIV.