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*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 173**

127th General Assembly  
(As Introduced)

**Reps. Seitz and Book**

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### **BILL SUMMARY**

- Creates the Judicial Appointment Review Commission to make nonbinding recommendations to the Governor for the appointment of persons to fill judicial vacancies.
- Creates the Judicial Allotment Review Commission to study the number of judges on trial courts and courts of appeals in relation to each court's caseload and to make recommendations to the General Assembly regarding the creation and abolition of judgeships.
- Increases judicial salaries and requires the employer of certain judges whose positions are abolished to purchase service credit for those judges.
- Defines "engaged or engaging in the practice of law," increases the number of years of judicial experience or years of engaging in the practice of law a judge of a court of common pleas, court of appeals, or the Supreme Court must have before taking office, and permits the board of county commissioners in certain small counties to submit to the electors the question of whether to reduce that required number of years of prior experience for common please court judges of that county.
- Requires the Supreme Court to establish a judicial candidate qualification program for candidates for judicial office.
- Creates the Supreme Court Security Fund to help pay for court security projects and authorizes the Director of Budget and Management to transfer money to the fund from the Reparations Fund for the next biennium, subject to the main operating appropriations bill.

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## TABLE OF CONTENTS

Judicial Appointment Review Commission.....	2
Judicial Allotment Review Commission.....	3
Appointment of members.....	3
Meetings.....	4
Expenses.....	5
Duties.....	5
Legislation creating and abolishing judgeships.....	7
Definitions.....	7
Judicial compensation and service credit.....	7
Salaries.....	7
Service credit.....	9
Qualifications of judges.....	10
Legal experience.....	10
Judicial candidate qualification program.....	11
Supreme Court Security Fund.....	12
Appropriations and effective date.....	12

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## CONTENT AND OPERATION

### *Judicial Appointment Review Commission*

Under current law, when the office of a judge is vacant at the expiration of the term of the incumbent, the Governor fills the vacancy by appointment. If the appointment is to a court of appeals, court of common pleas, or municipal court, the clerk of the court must give written notice of the name of the appointee to the board of elections responsible for conducting elections for that court. A successor is elected for the unexpired term at the first general election for the office that occurs more than 40 days after the vacancy occurs. (R.C. 107.08.)

If the office of any judge becomes vacant before the expiration of the judge's regular term, the Governor fills the vacancy by appointment until a successor is elected. A successor must be elected for the unexpired term at the first general election that occurs more than 40 days after the vacancy occurs. No election to fill the vacancy is held if it occurs within one year after that general election. (Ohio Const. Art. IV, Section 13.)

The bill creates a Judicial Appointment Review Commission to recommend to the Governor persons to fill a judicial vacancy when no person has been elected to fill the vacancy or when the office of a judge becomes vacant before expiration of the regular term. The commission consists of five, seven, nine, or eleven members. The Governor determines the number of commission members and

appoints a simple majority of the members. The Chief Justice names the remaining members after the Governor makes all the gubernatorial appointments. In making the appointments, the Governor and Chief Justice must consider the race, ethnicity, sex, and other characteristics of the individuals to be appointed in an effort to make the commission broadly representative of the population of the state. Not more than a simple majority of the members may be attorneys, and not more than one-half of the members may belong to the same political party. Of the initial appointees, the Governor's are appointed for terms of four years each, and the rest are appointed for terms of two years each. Thereafter, all terms are four years. The Governor and Chief Justice choose the successors to their own initial appointees. The Governor chooses the commission chairperson, who serves in that role at the pleasure of the Governor.

The commission must recommend three persons to fill the vacancy in a judicial office. In making a recommendation, the commission must consider the length of time a person under consideration has practiced law, whether the person has been certified in a specialty area pursuant to the Supreme Court's rules for the government of the bar, the person's disciplinary history under the Code of Professional Responsibility or rules of professional conduct adopted by the Supreme Court, comments received from the county bar associations and the chairpersons of the county central committees of the political parties in the county or district in which the judgeship is located, and any other factors the commission considers relevant. The Governor may appoint one of the three recommended persons or another person to fill the vacancy. The Governor may not appoint a person who within two years before the appointment served on the commission. (R.C. 107.08(B).)

The bill bars the Governor from filling a vacant judgeship for at least 20 days after a vacancy occurs. If within 20 days after the vacancy occurs the Chief Justice convenes a meeting of the commission to consider the vacancy, the Governor may not fill the vacancy until the earliest of the date that is 45 days after the day on which the commission meets, the date on which the commission issues a report on the need to continue the judgeship, or the date on which the General Assembly specifically authorizes the Governor to fill the vacancy. (R.C. 107.08(B) and 2503.54(E).)

### **Judicial Allotment Review Commission**

#### **Appointment of members**

The bill creates the Judicial Allotment Review Commission consisting of the Chief Justice and 18 other members appointed as follows (R.C. 2503.52(A)):

(1) Two members of the House of Representatives appointed by the Speaker, one of whom the Speaker appoints upon the recommendation of the minority leader of the House;

(2) Two members of the Senate appointed by the President, one of whom the President appoints upon the recommendation of the minority leader of the Senate;

(3) Eight members appointed by the Chief Justice. Two must be judges of the Court of Appeals chosen from a list of four nominees submitted by the Ohio Court of Appeals Judges Association. Four must be judges of the Court of Common Pleas (one from a list of two nominees submitted by the Ohio Common Pleas Judges Association, one from a list of two nominees submitted by the Ohio Association of Juvenile Court Judges, one from a list of two nominees submitted by the Ohio Association of Domestic Relations Judges, and one from a list of two nominees submitted by the Ohio Association of Probate Judges). Two of the Chief Justice's appointees must be judges of the municipal court or county court chosen from a list of four nominees submitted by the Association of Municipal/County Judges of Ohio.

(4) Four members appointed by the Governor (a county commissioner nominated by the County Commissioners Association of Ohio, an individual nominated by the Ohio Municipal League, and two Ohio attorneys nominated by the Ohio State Bar Association);

(5) Two members appointed by the chairperson of the Ohio Judicial Conference.

The initial appointments of commission members must be made within 90 days after the effective date of the bill. The term of office of each initial member of the commission ends upon the submission of the commission's report pursuant to R.C. 2503.55. Any vacancy is to be filled in the manner provided for the original appointment. Subsequent appointments of new members must be made within 30 days after April 1, 2011, and within 30 days after April 1 in every tenth year after 2011. The term of office of each subsequently appointed member of the commission ends upon the submission of the report of the commission that was prepared while the subsequently appointed member was a member of the commission. (R.C. 2503.52(B) and (C).)

### **Meetings**

The Chief Justice, who chairs the commission, or the Chief Justices's designee, must call a meeting each time a new group of members is appointed. In addition, the Chief Justice, upon notice to the Governor, may convene a meeting within 20 days after a judgeship becomes vacant to consider the need for

continuing that judgeship. A majority of the members constitutes a quorum. (R.C. 2503.53(A).)

### **Expenses**

The bill requires the Supreme Court to reimburse commission members for actual and necessary expenses incurred in the performance of their duties and may provide any professional, technical, or clerical employees that the commission needs to carry out its duties (R.C. 2503.53(B) and (C)).

### **Duties**

The bill imposes on the commission the duty to study and review the allotment of judgeships for each trial court and Court of Appeals in relation to the number of cases filed in the court and the disposition of those cases in order to recommend to the General Assembly legislation to ensure the efficient, prompt, and sure administration of justice in Ohio. In conducting its studies and making its recommendations, the commission must consider all of the following that are applicable to a particular court:

(1) The number and types of cases that were filed in the court in the preceding five years, the number and types of those cases that were assigned to each judge of that court, and the ranking of these numbers and types in comparison to other courts in the state of similar size and jurisdiction;

(2) The number and types of cases assigned to each judge of the court that are currently pending and the comparative ranking of these numbers and types in comparison to other courts in the state of similar size and jurisdiction;

(3) Any increase, decrease, or other changes in the caseload of each judge of the court in the preceding five years and the comparative ranking of the caseload of the judges of that court in relation to any increase, decrease, or other changes in the caseload of each judge of other courts in the state of similar size and jurisdiction;

(4) Any standards established by the Supreme Court for manageable workloads or caseloads;

(5) The frequency with which the court has requested or received temporary assignments of additional judges in the preceding five years;

(6) The number of trial judges in relation to each judge of the court of appeals within the district of that court of appeals;

(7) The population growth and density in the area in which the court has territorial jurisdiction;

(8) In the case of a court of appeal, the population of the appellate district, the number of counties in the district, the number of days in which cases are heard in counties within the district other than the county that is the principal seat of the court or the county in which the court primarily sits, and the time spent for the judges to travel to those other counties for the purpose of hearing cases;

(9) Whether the area in which the court has territorial jurisdiction is urban or rural in character;

(10) The presence of any state or local government institutions within the court's territorial jurisdiction;

(11) Any new legislation, events, or court litigation that may have an impact on the caseload or administrative workload of a court;

(12) Any information or recommendations provided by a county or municipal legislative authority that funds the court or by a bar association that operates within the territorial jurisdiction of the court regarding the creation of judgeships for or elimination of judgeships from the court;

(13) Any other factors that the commission may consider relevant in reviewing the allotment of judgeships for the purpose of making its recommendations to the General Assembly. (R.C. 2503.54(B) and (C).)

If the Chief Justice convenes a meeting of the commission to consider the need for continuing a particular judgeship that has become vacant, the commission must within 45 days after the meeting prepare a report on the need for continuing the judgeship and submit it to the Governor, the Supreme Court, and the General Assembly (R.C. 2503.54(E)).

On or before December 31, 2007, on or before April 1, 2012, and then on or before April 1 in every tenth year after 2012, the commission must prepare and submit to the Supreme Court and the General Assembly a report that includes the commission's conclusions and recommendations based on its study of the allotment of judgeships for each court. The recommendations may include, but are not limited to, enacting legislation to increase or decrease the number of judgeships of a court or to change the status of a judgeship of a court from part-time to full-time. If the members of the commission do not unanimously agree on recommendations, the commission determines by majority vote the specific recommendations that are to be included in the report. Dissenting members may submit a minority report that includes the specific recommendations of those members. (R.C. 2503.55(A) and (B).)

### **Legislation creating and abolishing judgeships**

The bill requires that the General Assembly, in enacting legislation to implement a recommendation of the Judicial Allotment Review Commission to abolish a judgeship of a particular court, may designate only the court and, in the case of a court of common pleas or municipal court, the division, if any, of the court. The judgeship abolished will be the first judgeship of the court or division that becomes vacant within five years after the effective date of the bill by reason of the death, resignation, retirement, removal, or failure to seek reelection of a judge of the court or division. If no judgeship becomes vacant within that five-year period, the judgeship abolished will be the one most recently created. If the term of office of the abolished judgeship began before the effective date of the bill, the judgeship is abolished whenever it becomes vacant or at the end of the term. If the term of office of the abolished judgeship began after the effective date of the bill, the judgeship is abolished whenever it becomes vacant or at the end of five years from the effective date. (R.C. 2503.55(C).)

The bill specifically authorizes the judges of a court to ask the General Assembly for the creation of one additional judgeship if the population within the court's territorial jurisdiction increases by 20% between April 1, 2011, and April 1, 2021, and between the first day of April of the first year and the first day of April of the tenth year of each ten-year period after 2021 (R.C. 2503.54(D)).

### **Definitions**

As used in the sections relating to studies conducted and reports prepared by the Judicial Allotment Review Commission and legislation implementing recommendations of the commission, the following definitions apply (R.C. 2503.54(A)):

(1) "Court" means the court of appeals; the general division, probate division, domestic relations division, or juvenile division of the court of common pleas; the municipal court; or the county court.

(2) "Cases" mean civil cases, criminal cases, and traffic cases.

(3) "Caseload" means the number of civil cases, criminal cases, and traffic cases that are assigned to an individual judge of a court.

### **Judicial compensation and service credit**

#### **Salaries**

Under current law, judges receive a yearly salary set in 2000, with annual increases through 2008 of the lesser of 3% or an adjustment percentage based on

the consumer price index. The state pays part of the salaries of common pleas, municipal, and county court judges. The rest is paid by county and municipal governments. Under current law, unchanged by the bill, full-time municipal court judges and part-time municipal court judges with large populations (more than 50,000) within their territorial jurisdiction receive \$61,750 annually from local government. Part-time municipal court judges and county court judges receive \$35,500 from local government. Judges of the court of common pleas, including probate judges, receive from the county 18¢ per county inhabitant, but not less than \$3,500 nor more than \$14,000. The average county share is approximately \$12,200. The cost-of-living adjustments apply to both the state and local shares of the salaries of common pleas, municipal, county court judges, but the state pays for the entire amount of the increases. (R.C. 141.05, 1901.11, and 1907.16.)

The bill establishes new base salaries for all judges for calendar years 2008, 2009, and 2010, as shown in the chart below, including the local shares for judges of the common pleas, municipal, and county courts. The bill does not alter the contributions from local governments or the additional compensation allowed to municipal and county court judges who serve as the administrative judges of their courts. The bill changes the cost-of-living increase from the lesser to the greater of 3% or the adjustment percentage and specifies that the adjustment applies to new salaries beginning in 2008. (R.C. 141.04.)

The following chart shows the current salaries and the salaries proposed in the bill for all judges, not including the extra amounts allowed for administrative judges.

<b>Court</b>	<b>2007</b> (current salary)	<b>2008</b> (bill)	<b>2009</b> (bill)	<b>2010</b> (bill)
Supreme: Chief Justice	146,750	154,393	162,036	169,679
Supreme: Justice	137,750	145,967	154,184	162,401
Court of Appeals	128,400	135,212	142,022	148,836
Common Pleas	118,050	125,507	132,964	140,421
Municipal (full-time and part-time in territories with population over 50,000)	111,000	118,466	125,932	133,398.41
Municipal (part-time in territories with population under 50,000) and County	63,850	68,135	72,420.56	76,705



### Service credit

The bill provides that if the General Assembly abolishes a judgeship pursuant to a recommendation of the Judicial Allotment Review Commission and the judgeship is abolished after the five-year waiting period for a vacancy (see "Legislation creating and abolishing judgeships," above), the public employer responsible for the judgeship that is being eliminated must provide for a purchase of five years of service credit on behalf of the judge if the judge meets all of the following:

(1) The judge must be a member of the Public Employees Retirement System (PERS).

(2) The judge must be eligible to retire or become eligible to retire as a result of purchasing the service credit.

(3) The judge must agree to retire within 90 days after receiving notice of payment of the purchase amount (R.C. 145.2914(A), (B), and (C)).

The public employer is responsible for the cost of purchasing the service credit. On receipt of a request from the judge, PERS must obtain from its actuary certification of the additional liability to the system for the amount of service credit to be purchased and must notify the employer of the additional liability. When the judge elects to receive the service credit, the judge and the employer must agree upon a date for payment, or contracting for payment in installments, to PERS of the cost of the service credit to be purchased. The employer must then submit to PERS a written request for determination of the cost of the service credit and, within 45 days after receiving the request, PERS must give the employer written notice of the cost. (R.C. 145.2914(D) and (E).)

The employer must pay, or contract to pay in installments, the cost of the service credit to be purchased on the date agreed to by the employer and the judge. The payment must be made in accordance with rules adopted by the Public Employees Retirement Board. Those rules may provide for payment in installments and for crediting the purchased service credit to the judge's account upon the employer's contracting to pay the cost in installments. PERS must notify the judge when the judge is credited with service purchased. If the judge does not retire within 90 days after receiving notice that the judge has been credited with the purchased service credit, PERS must refund to the employer the amount paid for the service credit. (R.C. 145.2914(E).)

The bill states that no payment made to PERS under these provisions affects any payment required under R.C. 145.48, which established regular employer contributions for PERS members (R.C. 145.2914(E)).

## Qualifications of judges

### Legal experience

Existing law requires that before a person is elected to or is appointed to fill a vacancy in the office of judge of a municipal court, a county court, a common pleas court, or the Supreme Court or begins a term for one of those positions, the person, for a specified number of years, must have engaged in the practice of law in Ohio, served as a judge of a court of record, or both. Existing law does not define "engaged in the practice of law." Under the bill, "engaged in the practice of law" or "engaging in the practice of law" means having had as a primary occupation one or a combination of two or more of the following occupations (R.C. 1901.06(B), 1907.13, 2301.01(D), 2501.02, and 2503.01):

- (1) Attorney at law in good standing and registered for active status with the Supreme Court;
- (2) Professor of law at an accredited law school;
- (3) Member of the General Assembly if before becoming a member of the General Assembly the member otherwise engaged in the practice of law in this state as a primary occupation;
- (4) Any other occupation recognized as the practice of law by rules or decisions of the Supreme Court.

Under existing law, a judge of a municipal court, a county court, a court of common pleas, a court of appeals, or the Supreme Court must have for at least six years engaged in the practice of law in Ohio or served as a judge of a court of record in any jurisdiction in the United States. (R.C. 1901.06, 1907.13, 2301.01, 2501.02, and 2503.01.)

The bill increases the required years of experience of engaging in the practice of law in Ohio of common pleas judges from six to ten, unless the person has served as a judge of a court of record in any jurisdiction of the United States for at least six months, in which case the required number of years of engaging in the practice of law in Ohio remains six. The bill authorizes the board of county commissioners of a county in which there is one judge of the court of common pleas and in which the population is less than 50,000 to adopt a resolution submitting to the voters the question of reducing the minimum number of years of engaging in the practice of law from ten to any number not less than six. The board must certify the resolution to the county board of elections, and the board of elections must arrange to submit the question to the voters at the next general election occurring not less than 45 days after the resolution is certified. Notice of the election must be published in one or more newspapers of general circulation in

the county once a week for four consecutive weeks prior to the election. If the electors approve the resolution, the reduced minimum number of years of practice applies to the next judge elected or appointed. (R.C. 2301.01(A) and (C).)

The bill increases the required years of having engaged in the practice of law in Ohio for judges of the courts of appeals from six to twelve and for Supreme Court justices from six to fifteen (R.C. 2501.02 and 2503.01).

### **Judicial candidate qualification program**

The bill requires the Supreme Court to establish by rule a judicial candidate qualification program to ensure that a candidate for the office of judge of a municipal court, county court, court of common pleas, court of appeals, or the Supreme Court is professionally qualified for the office. The rules must include a requirement that every candidate, except a candidate who has already held the office to which he or she seeks election or to a candidate for the office of judge of any division of a court of common pleas who has already held the office of judge of any division of a court of common pleas, attend one or more courses approved by the Supreme Court totaling at least 40 hours and covering civil and criminal procedure, the Ohio Rules of Evidence, constitutional law, judicial demeanor and decorum, and any other subjects that the Supreme Court may require. The rules may provide for any of the following (R.C. 2503.51):

(1) That designated courses taken to meet continuing legal education requirements established by the Supreme Court apply toward the hours of education required by the judicial candidate qualification program;

(2) That each candidate for a particular type of judgeship take courses required for all judicial candidates and courses required only for candidates for that particular type of judgeship and that a candidate for a particular judicial office take one or more courses in specific areas of law not required of all candidates for judicial office;

(3) An exemption from all or part of the hours of course work for a candidate who has been certified as a specialist pursuant to rules adopted by the Supreme Court if the certification is in an area of law that is directly pertinent to the judicial office to which the candidate seeks election.

The Supreme Court may require that a person who is appointed to the office of judge meet the educational qualifications for the office, may exempt a candidate for judge or a person appointed to a judgeship from meeting those qualifications, and may delay the date by which a candidate or appointee must meet those qualifications if a candidate is a replacement for a candidate who died shortly before the election or if other exigent circumstances exist (R.C. 2503.51(C)).

The bill requires that a candidate for the office of judge of a municipal court, county court, court of common pleas, court of appeals, or the Supreme Court, not later than 75 days before the general election, present to the board of elections or the Secretary of State, as applicable, a document from the Supreme Court certifying that he or she has met the requisite educational qualifications or stating that he or she is exempt from meeting those qualifications before the election (R.C. 2503.51(D)).

The bill explicitly provides that the new qualifications for judges do not apply to incumbents during their current terms (Section 3).

### **Supreme Court Security Fund**

Under current law, when a person is convicted of an offense other than a traffic offense that is not a moving violation, or is found to be a delinquent child or a juvenile traffic offender for an act that, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, the court must impose court costs of \$30 for a felony or \$9 for a misdemeanor. If a criminal defendant in such cases posts bail, the court clerk must retain the \$30 or \$9 until the case is resolved or the defendant otherwise forfeits the bail. Unless the money is part of the bail that is returned to the defendant upon acquittal or dismissal of the charges, the clerk must pay the \$30 or \$9 to the State Treasurer for deposit into the Reparations Fund for the crime victims' reparations program. (R.C. 2743.70.)

The bill creates in the state treasury the Supreme Court Security Fund and requires that \$2 of the court costs or bail amount that under current law goes into the Reparations Fund be paid to the State Treasurer for deposit into the new fund. The Supreme Court must use the money in the Supreme Court Security Fund to fund court security projects and must adopt guidelines to govern disbursements from the fund. (R.C. 2743.60, 2743.191, 2743.70, and 2949.111.)

### **Appropriations and effective date**

Subject to H.B. 119, the main operating appropriations act now pending in the General Assembly, the bill directs the Director of Budget and Management to transfer \$3,028,499 in FY 2008 and \$9,239,769 in FY 2009 from the Reparations Fund to the General Revenue Fund to be used by the Supreme Court to fund court security projects. The bill requires the Director to establish the necessary accounts for these appropriations and specifies that expenditures from the appropriations shall be accounted for as though made in H.B. 119. The bill provides that the amended versions of R.C. 141.04, 2743.60, 2743.191, 2743.70, and 2949.111, which deal with judicial salaries and the Supreme Court Security Fund, go into immediate effect. (Sections 4, 5, and 6 of the bill.)

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## HISTORY

ACTION

DATE

Introduced

04-24-07

H0173-I-127.doc/jc

