

# Fiscal Note & Local Impact Statement

127<sup>th</sup> General Assembly of Ohio

Ohio Legislative Service Commission  
77 South High Street, 9<sup>th</sup> Floor, Columbus, OH 43215-6136 ♦ Phone: (614) 466-3615

♦ Internet Web Site: <http://www.lsc.state.oh.us/>

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**BILL:** Sub. **H.B. 173** (LSC 127 0457-6 with amendment HC-10)      **DATE:** May 22, 2008

**STATUS:** In House Judiciary      **SPONSOR:** Reps. Seitz and Book

**LOCAL IMPACT STATEMENT REQUIRED:** No — No local cost

**CONTENTS:** Creates the Judicial Appointment Review Commission, creates the Judicial Allotment Review Commission, and requires the employer of certain judges whose positions are abolished to purchase service credit for those judges

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## State Fiscal Highlights

| STATE FUND  | FY 2009 – FUTURE YEARS  |
|---|---|
| <b>General Revenue Fund (GRF)</b>                   |   |
| Revenues  | - 0 -   |
| Expenditures  | (1) Annual increase, likely to exceed minimal, for Supreme Court to administer judicial candidate qualification program; (2) Potential one-time intermittent increases to purchase service credit, timing and magnitude uncertain and dependent on future decisions |
| <b>Victims of Crime/Reparations Fund (Fund 402)</b> |   |
| Revenues  | Loss estimated at up to \$3.5 million or more annually in locally collected court costs   |
| Expenditures  | Annual decrease commensurate with revenue loss  |
| <b>Supreme Court Security Fund (New Fund 5DD)</b>   |   |
| Revenues  | Gain estimated at around \$3.5 million annually in locally collected state court costs  |
| Expenditures  | Annual increase, up to available revenues   |

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- **Victims of Crime/Reparations Fund (Fund 402).** The bill requires that \$2 of the court costs or bail amount that under current law goes to Fund 402 be paid to the State Treasurer for deposit into the Supreme Court Security Fund. LSC fiscal staff has estimated that the provision will redirect around \$3.5 million of the fund's revenue stream annually. According to data provided by the Office of the Attorney General, Fund 402, based on current revenue and expenditure patterns, will become insolvent in FY 2011. Assuming that the Office of the Attorney General's analysis is reasonably accurate, then the bill would accelerate the fund's projected cash flow crisis.
- **Supreme Court Security Fund.** The bill creates in the state treasury the Supreme Court Security Fund (Fund 5DD) and requires that \$2 of the court costs or bail amount that under current law goes to the Victims of Crime/Reparations Fund be paid to the State Treasurer for deposit into the new fund. LSC fiscal staff has estimated that the magnitude of the fund's annual revenue stream will be around \$3.5 million.

- **Judicial candidate qualification program.** It appears that the Supreme Court's intent is to involve its Judicial College in the development and delivery of the necessary course(s) and that the Court would most likely not charge an attendance or participation fee. Based on a conversation with Supreme Court staff, it appears that the annual cost to administer the judicial candidate qualification program will exceed minimal, perhaps around \$150,000, and that cost would most likely be covered by moneys drawn from the Court's GRF budget.
- **Judicial Allotment Review Commission.** Due to the intermittent nature of the Commission's work, it seems unlikely that the Supreme Court will need to hire any additional staff, but would instead utilize existing staff to support the Commission in carrying out its duties. The costs associated with providing that support appear unlikely to exceed minimal.
- **Judicial Appointment Review Commission.** The creation and operation of the Commission would not appear to generate any readily discernible state fiscal effects.
- **Service credit.** Presumably, the cost of purchasing the service credit would be split between the state and appropriate local jurisdiction(s) in the same proportion as the state and local share(s) of the base annual salary in effect at the time that the judgeship is abolished. The potential cost of purchasing the service credit is uncertain, as such a possibility would not occur until at least five years following the provision's effective date, and will be contingent upon decisions of the Judicial Allotment Review Commission and the General Assembly made at some future unknown point in time.

### *Local Fiscal Highlights*

| <b>LOCAL GOVERNMENT</b>            | <b>FY 2008 – FUTURE YEARS</b>  |
|------------------------------------|--|
| <b>Counties and Municipalities</b> |  |
| Revenues                           | Potential gain in state grant moneys for court security projects,<br>annual magnitude uncertain  |
| Expenditures                       | (1) Potential annual increase to undertake court security improvements, presumably offset in whole or part by state grant moneys; (2) Potential one-time intermittent increases to purchase service credit, timing and magnitude uncertain and dependent on future decisions |

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Court security projects.** It seems likely that the state's Supreme Court Security Fund would be used, at least in part, to assist counties and municipalities in undertaking any necessary court security improvements projects. However, the magnitude and timing of that state financial support is uncertain.
- **Service credit.** Presumably, the cost of purchasing the service credit would be split between the state and appropriate local jurisdiction(s) in the same proportion as the state and local share(s) of the base annual salary in effect at the time that the judgeship is abolished. The potential cost of purchasing the service credit is uncertain, as such a possibility would not occur until at least five years following the provision's effective date, and will be contingent upon decisions of the Judicial Allotment Review Commission and the General Assembly made at some future unknown point in time.

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## *Detailed Fiscal Analysis*

### **Fiscally notable provisions of the bill**

For the purposes of this fiscal analysis, the bill most notably:

- Creates in the state treasury the Supreme Court Security Fund (Fund 5DD) and requires that \$2 of the court costs or bail amount that under current law goes into the Victims of Crime/Reparations Fund (Fund 402) be paid to the State Treasurer for deposit into the new fund, and provides Fund 5DD with appropriation authority totaling \$3.8 million in each of FYs 2008 and 2009.
- Requires the Supreme Court to establish by rule a judicial candidate qualification program.
- 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.
- Requires the employer of certain judges whose positions are abolished to purchase service credit for those judges.

### **Victims of Crime/Reparations Fund (Fund 402)**

The bill requires that \$2 of the court costs or bail amount that under current law goes to the Attorney General's Victims of Crime/Reparations Fund (Fund 402) be paid to the State Treasurer for deposit into the new fund. LSC fiscal staff has estimated that the magnitude of the fund's annual revenue stream will be around \$3.5 million.

According to data provided by the Office of the Attorney General, Fund 402, based on current revenue and expenditure patterns, will become insolvent in FY 2011. The fund's end of year cash balance decreased from \$34.6 million in FY 2006 to \$23.2 million in FY 2007, is projected to decrease to \$2.6 million by the close of FY 2010, and is projected to post a deficit by FY 2011. Assuming that the Office of the Attorney General's analysis is reasonably accurate, then the bill would accelerate the fund's projected cash flow crisis.

Based on information provided by the Office of the Attorney General, this decrease in the fund's end of year cash balance is due to a variety of factors. First, the fund is taking in less revenue in the form of court costs. In FY 2003, \$18.5 million in court costs was collected; in FY 2007, \$16.1 million in court costs was collected. LSC fiscal staff has estimated that the bill will redirect \$3.5 million of that annual amount into the Supreme Court Security Fund.

Second, the magnitude of the fund's annual disbursements has increased. For example, disbursements on: (1) DNA services have expanded from \$400,000 in FY 2003 to \$2.3 million in FY 2007, (2) crime victim compensation awards have increased from a total of \$19.7 million in FY 2003 to \$25.5 million in FY 2007, and (3) victim assistance program subsidies have increased from \$2.8 million in FY 2003 to \$5.2 million in FY 2007. Costs associated with child and elder protection were \$0 in FY 2003, but increased to \$1.7 million in FY 2007.

Overall, the fund's total annual revenues have decreased from \$25.7 million in FY 2003 to \$25.6 million in FY 2007, while the fund's total annual expenditures have increased from \$24.1 million in FY 2003 to \$37.0 million in FY 2007 (an increase of 53.5%).

### **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 is professionally qualified for the office. The rules must include a requirement that, subject to certain exceptions, every candidate 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.

It appears that the Supreme Court's intent is to involve its Judicial College in the development and delivery of the necessary course(s) and that the Court would most likely not charge an attendance or participation fee. Based on a conversation with Supreme Court staff, it appears that the annual cost to administer the judicial candidate qualification program will exceed minimal, perhaps around \$150,000, and that cost would most likely be covered by moneys drawn from the Court's GRF budget.

### **Judicial Allotment Review Commission**

The bill creates the Judicial Allotment Review Commission consisting of the Chief Justice and 18 other members and imposes on the Commission the duty to study and review the allotment of judgeships for each trial court and court of appeals. By the first anniversary of the bill's effective date, then by April 1 of 2013, and every 10th year thereafter, the Commission is required to 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 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.

Due to the intermittent nature of the Commission's work, it seems unlikely that the Supreme Court will need to hire any additional staff, but would instead utilize existing staff to support the Commission in carrying out its duties. The costs associated with providing that support appear unlikely to exceed minimal.

### **Judicial Appointment Review Commission**

The bill creates a Judicial Appointment Review Commission, consisting of seven, nine, or eleven members as determined by the Governor, 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. Members serve without compensation and are not authorized to be reimbursed for their actual and necessary expenses incurred in the performance of their duties. State and local governmental entities are neither required nor explicitly permitted to provide any professional, technical, or clerical support for the Commission to perform its duties and functions. Thus, the creation and operation of the Commission would not appear to generate any readily discernible fiscal effects for the state or local governments.

### **Supreme Court Security Fund (Fund 5DD)**

**Revenues.** The bill creates in the state treasury the Supreme Court Security Fund (Fund 5DD) and requires that \$2 of the court costs or bail amount that under current law goes to into the Victims of Crime/Reparations Fund be paid to the State Treasurer for deposit into the new fund. LSC fiscal staff has estimated that the magnitude of the fund's annual revenue stream will be around \$3.5 million.

**Expenditures.** The Supreme Court is required to use the money to fund court security projects and to adopt guidelines to govern the disbursements from the fund. In discussing the possible uses of these moneys with Supreme Court staff, LSC fiscal staff discerned that there do not appear to be any concrete plans on how these moneys would be used or how these moneys might be disbursed to assist courts in undertaking any necessary security improvements projects.

**Appropriations.** The bill provides Fund 5DD with appropriation authority totaling \$3.8 million in each of FYs 2008 and 2009.

### **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, 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 certain conditions are met. Presumably, the cost of purchasing the service credit would be split between the state and appropriate local jurisdiction(s) in the same proportion as the state and local share(s) of the base annual salary in effect at the time that the judgeship is abolished. The potential cost of purchasing the service credit is uncertain, as such a possibility would not occur until at least five years following the provision's effective date, and will be contingent upon decisions of the Judicial Allotment Review Commission and the General Assembly made at some future unknown point in time.

## *Synopsis of Fiscal Changes*

From a fiscal perspective, the most notable differences between the As Introduced version of the bill and its accepted substitute version (LSC 127 0457-6) can be summarized as follows:

- **Judicial salary increases.** The bill's As Introduced version established new base salaries for judges and justices of the court for calendar years (CYs) 2008, 2009, and 2010, by statute through 2010, required those base salaries increase by 3% or the percentage increase in the Consumer Price Index (CPI) whichever is *greater* in future years, and specified that this percentage adjustment applies to new salaries beginning in 2007 and annually thereafter. LSC fiscal staff estimated that: (1) the amount of back pay for FY 2007 would total approximately \$600,000 and create an additional state liability of approximately \$600,000 in FY 2008, (2) the increase in judicial salaries and related payroll expenses through 2010 would cost the state up to \$3.2 million or more in FY 2008, up to \$9.6 million or more in FY 2009, and up to \$17.0 million or more in FY 2010. Annually thereafter, the state's share of judicial salaries and related payroll expenses would increase by a minimum of 3.0%. These provisions are not included in the accepted substitute version.
- **Victims of Crime/Reparations Fund.** The bill's As Introduced version directed the Director of Budget and Management to transfer \$3,028,499 in FY 2008 and \$9,239,769 in FY 2009 from the Victims of Crime/Reparations Fund (Fund 402) to the General Revenue Fund (GRF) and appropriated those amounts to be used by the Supreme Court to fund the proposed increase in judicial compensation in each of those fiscal years. These provisions are not included in the accepted substitute version.

*LSC fiscal staff: Matthew L. Stiffler, Budget Analyst*

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