

# ***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:**                **H.B. 173**     **DATE:**                **June 13, 2007**  
**STATUS:**         **As Introduced**     **SPONSOR:**        **Reps. Seitz and Book**  
**LOCAL IMPACT STATEMENT REQUIRED:**         **No — No local cost**  
**CONTENTS:**        **Judicial compensation**

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## ***State Fiscal Highlights***

<b>STATE FUND</b>	<b>FY 2008</b>	<b>FYs 2009 and FY 2010</b>	<b>Future Years</b>
<b>General Revenue Fund (GRF)</b>			
Revenues	Gain of \$3,028,499 in one-time Fund 402 cash transfer	Gain of \$9,239,769 in one-time FY 2009 Fund 402 cash transfer	- 0 -
Expenditures	(1) Increase in judicial salary and related payroll expenses of approximately \$608,000 to cover back pay owed from FY 2007; (2) Up to \$3.8 million or more increase to cover FY 2008 judicial salary and related payroll expenses; (3) Increase, likely to exceed minimal, to administer judicial candidate qualification program	(1) Up to \$9.6 million in FY 2009 or more increase to cover judicial salary and related payroll expenses; (2) Up to \$17.0 million or more increase in FY 2010 to cover judicial salary and related payroll expenses; (3) Increase, likely to exceed minimal, to administer judicial candidate qualification program	(1) Minimum increase of 3.0% in judicial salary and related payroll expenses annually thereafter; (2) Increase, likely to exceed minimal, to administer judicial candidate qualification program
<b>Victims of Crime/Reparations Fund (Fund 402)</b>			
Revenues	(1) Loss of \$3,028,499 in one-time cash transfer to GRF; (2) Loss estimated at up to \$3.5 million or more in locally collected court costs	(1) Loss of \$9,239,769 in one-time cash transfer to GRF in FY 2009; (2) Loss estimated at up to \$3.5 million or more in locally collected court costs	Loss estimated at up to \$3.5 million or more annually in locally collected court costs
Expenditures	Decrease commensurate with revenue loss	Decrease commensurate with revenue loss	Decrease commensurate with revenue loss
<b>Supreme Court Security Fund (New Fund 5DD)</b>			
Revenues	Gain estimated at around \$3.5 million in locally collected state court costs	Gain estimated at around \$3.5 million in locally collected state court costs	Gain estimated at around \$3.5 million in locally collected state court costs
Expenditures	Up to available revenues	Up to available revenues	Up to available revenues

Note: The state fiscal year is July 1 through June 30. For example, FY 2008 is July 1, 2007 – June 30, 2008.



- **Judicial compensation.** LSC fiscal staff estimates that: (1) the amount of back pay for FY 2007 will 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 will 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 will increase by a minimum of 3.0%.
- **Victims of Crime/Reparations Fund.** The bill: (1) directs 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 (2) 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. As of this writing, LSC fiscal staff has estimated that the latter 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 2009. Assuming that the Office of the Attorney General's analysis is reasonably accurate, then the bill would greatly 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. As of this writing, 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.** As of this writing, 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. As of this writing, 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***

LOCAL GOVERNMENT	FY 2007	FY 2008	FUTURE YEARS
<b>Counties and Municipalities</b>			
Revenues	Potential gain in state grant moneys for court security projects, magnitude uncertain	Potential gain in state grant moneys for court security projects, magnitude uncertain	Potential gain in state grant moneys for court security projects, magnitude uncertain
Expenditures	Potential increase to undertake court security improvements, presumably offset in whole or part by state grant moneys	Potential increase to undertake court security improvements, presumably offset in whole or part by state grant moneys	(1) Potential increase to undertake court security improvements, presumably offset in whole or part by state grant moneys; (2) Potential one-time increase to purchase service credit, magnitude uncertain and dependent on future decisions

- ***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:

- Establishes new base salaries for judges and justices of the court for calendar years (CYs) 2008, 2009, and 2010, by statute through 2010, requires those base salaries increase by 3% or the percentage increase in the Consumer Price Index (CPI) whichever is *greater* in future years, and specifies that this percentage adjustment applies to new salaries beginning in 2007 and annually thereafter.
- Directs 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 appropriates those amounts to be used by the Supreme Court to fund the proposed increase in judicial compensation in each of those fiscal years.
- 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.

### **Judicial compensation**

The bill will increase the compensation for judges and justices of the court by a predetermined amount through CY 2010. Beginning in CY 2007, the bill will also increase the base salary for judges and justices of the court by an amount equal to 3.0% or the increase in the Consumer Price Index (CPI), whichever is *greater*.

For CY 2007, the CPI increase to the base salary for judges and justices of the court was 1.7%. Thus, under the bill, the Supreme Court will owe for judges and justices of the court back pay

for CY 2007 in the amount of 1.3% of their annual salary for this time period. The following table illustrates the increase in compensation and related payroll expenses that will be owed for judges and justices of the court. LSC fiscal staff estimates the resulting total increase in salary and related payroll expenses, for which the Supreme Court would be responsible, at \$1,216,460 for CY 2007, which would include portions of FYs 2007 and 2008.

<b>CY 2007 Salary and Back-pay Analysis*</b>			
<b>Position (Number)</b>	<b>CY 2007 Salary</b>	<b>New CY 2007 Salary</b>	<b>Difference</b>
Chief Justice (1)	\$146,750	\$148,629	\$1,879
Associate Justice (6)	\$137,750	\$139,514	\$1,764
Court of Appeals (68)	\$128,400	\$130,038	\$1,638
Common Pleas (391)	\$105,850	\$107,383	\$1,533
Municipal (191)	\$49,520	\$50,675	\$1,155
Part-time Judges (64)	\$28,350	\$29,184	\$834
<b>Total Difference</b>			<b>\$997,099**</b>

\* Includes state share only (no local share increase).

\*\* Does not include fringe benefits estimated at 22% of salary totaling an additional \$219,362 over CY 2007.

The bill also provides for statutory salary increases in CYs 2008 through 2010. In addition to the salaries mandated by the bill, the salaries are to be increased in those years by 3.0% or the increase in the CPI, whichever is greater. The following table displays the minimum annual salary for judges and justices of the court based on a 3.0% increase for those years.

<b>Judicial Salaries Proposed by Bill*</b>			
<b>Position</b>	<b>CY 2008</b>	<b>CY 2009</b>	<b>CY 2010</b>
Chief Justice	\$159,025	\$166,897	\$174,769
Associate Justice	\$150,346	\$158,810	\$167,272
Court of Appeals	\$139,268	\$146,282	\$153,301
Common Pleas	\$129,272	\$136,934	\$148,753
Municipal	\$122,019	\$129,710	\$137,395
County Judges (PT)	\$70,179	\$74,593	\$79,006
Municipal Judges (PT)	\$70,179	\$74,593	\$79,006

Note: All salaries reflect the minimum 3% salary increase; actual salaries could be higher depending on the increase in the CPI in future years.

\* Includes state and local share.

In sum, LSC fiscal staff estimates that: (1) the amount of back pay for FY 2007 will 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 will 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 will increase by a minimum of 3.0%.

Many judge's salaries are paid from a combination of local and state funds. The state is responsible for the full share of all state judge salaries, including the Chief Justice and associate justices of the Supreme Court, as well as the judges of the courts of appeals. The county is responsible for a portion of the salary of a court of common pleas judge, an amount that ranges between \$3,500 and \$14,5000 based on the population the judge serves. The average local share is approximately \$12,200 per judge. Municipal court judges are paid a fixed rate of \$61,750 through local funds. Part time municipal and county court judges are paid a fixed amount of \$35,500 through local funds. Under the bill, all of the increases in the salaries for the judges and justices of the court would be fully absorbed by the state.

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

The bill will affect the cash flow of the Attorney General's Victims of Crime/Reparations Fund (Fund 402) as follows:

- Directs the Director of Budget and Management to transfer \$3,028,499 in FY 2008 and \$9,239,769 in FY 2009 from Fund 402 to the General Revenue Fund (GRF) and appropriates those amounts to be used by the Supreme Court to fund the proposed increase in judicial compensation in each of those fiscal years.
- 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 Fund 402 be paid to the State Treasurer for deposit into the new fund. As of this writing, 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 2009. The fund's end of the year cash balance decreased from \$34.6 million in FY 2006 to \$20.6 million in FY 2007, is projected to decrease to \$9.6 million by the close of FY 2008, and is projected to post a deficit of \$4.6 million in FY 2009. Assuming that the Office of the Attorney General's analysis is reasonably accurate, then the bill would greatly 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 the 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, \$15.9 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 \$1.9 million in FY 2006, (2) crime victim compensation have increased from \$19.7 million in FY 2003 to \$24.2 million in FY 2006, and (3) victim assistance programs have increased from \$2.8 million in FY 2003 to \$5.5

million in FY 2006. Costs associated with child and elder protection were \$0 in FY 2003, but increased to \$1.5 million in FY 2006.

Overall, the fund's total annual revenues have increased from \$25.7 million in FY 2003 to \$27.5 million in FY 2006 (a gain of 7.0%), while the fund's total annual expenditures have increased from \$24.1 million in FY 2003 to \$35.2 million in FY 2006 (an increase of 46.1%).

### **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 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.

As of this writing, 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. 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 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. 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.

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. As of this writing, 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 five, 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. As of this writing, 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 also 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.

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

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