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Bill Analysis
Legislative Service Commission

Sub. S.B. 145*
 126th General Assembly
 (As Reported by S. Judiciary on Criminal Justice)

Sen. Armbruster

BILL SUMMARY

- Provides the judges of the Domestic Relations Division of the Lorain County Court of Common Pleas jurisdiction over probate matters, on and after January 1, 2006.
- Designates the successors to the current Lorain County Probate Judge as judges of the Domestic Relations Division of the Lorain County Court of Common Pleas.
- Creates an additional General Division judgeship for the Lorain County Court of Common Pleas to be filled initially at the 2006 general election.
- Creates an additional General Division judgeship for the Morrow County Court of Common Pleas to be filled initially at the 2006 general election.

CONTENT AND OPERATION

Background

Article IV, Section 4, Ohio Constitution, provides for courts of common pleas. It specifies that there is a court of common pleas and such divisions of the court as may be established by law serving each county of the state, that each county must have one or more resident judges as provided by law, and that, unless otherwise provided by law, there must be a probate division and such other

* *This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

divisions of the courts of common pleas as may be provided by law (judges must be elected specifically to the probate division and the other divisions).

Various provisions of existing law specify the number of judges of the court of common pleas for each county. Each county has at least one judge, and most counties have a separate probate judge and one or more other judges that handle cases and matters that are not probate related. A summary of the relevant existing provisions follows:

(1) Existing law specifies that a probate division of the court of common pleas must be held at the county seat in each county and that, every six years, in each county having a separate judge of the probate division of the court of common pleas, one probate judge is to be elected who is qualified as specified under general common pleas court law for a term of six years commencing on February 9 following the election. Existing law specifies that, as used in the Revised Code, "probate court" means the probate division of the court of common pleas and "probate judge" means the judge of the court of common pleas who is judge of the probate division. (R.C. 2101.01, and R.C. 2101.02--not in the bill; see **COMMENT 1.**)

(2) Existing law specifies the number of common pleas court judges for each county (generally, these are judges other than the probate judge of the county elected as described in (1), above; but see (3), below, for an exception to this general rule), with each judge elected for six years. For 43 counties, one judge is specified for the court under this provision and for 45 counties, more than one judge is specified under this provision. (R.C. 2301.01--not in the bill, and R.C. 2301.02.)

(3) Existing law specifies that judges of a probate division of a court of common pleas are judges of the court of common pleas but are to be elected pursuant to R.C. 2101.02 and 2101.021, except in Adams, Harrison, Henry, Morgan, Morrow, Noble, and Wyandot counties in which the judge of the court of common pleas elected pursuant to R.C. 2301.02 (see (2), above) also serves as judge of the probate division (R.C. 2301.02(C), in the last paragraph).

(4) Under existing law, generally, unless R.C. 2101.022, 2301.03, 2151.08, Chapter 2153., or another provision specifies otherwise, the probate division of a court of common pleas is the "juvenile court" for purposes of the Revised Code and has jurisdiction under R.C. Chapters 2151. and 2152., and the judge of that court is the "juvenile judge" (R.C. 2151.011(A)(1) and (2)--not in the bill).

(5) Existing law creates, for 29 specified courts of common pleas, various divisions of the courts other than probate divisions. Among the types of divisions

created are domestic relations divisions, juvenile divisions, and domestic relations-juvenile-probate divisions (R.C. 2301.03).

Lorain County Court of Common Pleas

Existing law

Currently, the Lorain County Court of Common Pleas has nine judges: one judge of the probate division (under R.C. 2101.01), five judges of the general division (under R.C. 2301.02(B)), and three judges of the domestic relations division (under R.C. 2301.02(B) and 2301.03(C)).

The Lorain County Probate Judge was elected in 2002 and is serving a term that commenced on February 9, 2003. The judges of the Lorain County Court of Common Pleas, other than the Probate Judge, are serving terms as follows: (1) five were elected in 2000 and are serving terms that, respectively, commenced on January 1, 2, 3, 4, and 5, 2001, and (2) three were elected in 2004 and are serving terms that, respectively, commenced on January 1, 2, and 3, 2005. (R.C. 2101.02 and 2301.02.)

Under existing law, the judges of the Lorain County Court of Common Pleas whose terms began on January 3, 2001, January 4, 2001, and January 2, 2005 (i.e., the successors to the judges whose terms began on January 3, 1959, January 4, 1989, and January 2, 1999), have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the Court and are elected and designated as judges of the Court of Common Pleas, Division of Domestic Relations. They have all of the powers relating to juvenile courts, and all cases under R.C. Chapters 2151. and 2152. (the Juvenile Code and the Delinquent Child/Juvenile Traffic Offender Law), all parentage proceedings over which the juvenile court has jurisdiction, and all divorce, dissolution of marriage, legal separation, and annulment cases are assigned to them, except for cases that for some special reason are assigned to another judge of the Court. (R.C. 2301.03(C).)

Operation of the bill

The bill provides the judges of the Domestic Relations Division of the Lorain County Court of Common Pleas jurisdiction over probate matters and designates the successors to the current Lorain County Probate Judge as judges of the Domestic Relations Division of the Lorain County Court of Common Pleas. It also creates a new General Division judgeship for the Lorain County Court of Common Pleas.

Lorain County Court of Common Pleas Domestic Relations Division-- expansion of jurisdiction to include probate matters. The bill specifies that, on and after January 1, 2006, the judges of the Domestic Relations Division of the Lorain County Court of Common Pleas, in addition to the powers and jurisdiction of the Division described above in "**Existing law**" under "**Lorain County Court of Common Pleas**," have jurisdiction over matters that are within the jurisdiction of the Probate Court under R.C. Chapter 2101. and other Revised Code provisions. From January 1, 2006, through February 8, 2009, the judges of the Domestic Relations Division are to exercise probate jurisdiction concurrently with the Probate Judge of Lorain County. (R.C. 2301.03(C)(1)(b).)

Related to this, it modifies R.C. 2301.02, which generally pertains to the election of common pleas court judges other than judges of the probate division, to specify that judges of the Lorain County Court of Common Pleas Domestic Relations Division elected pursuant to the section also are to perform the duties and functions of the judge of the probate division (R.C. 2301.02(C), last paragraph).

Designation of successors to the current Lorain County Probate Judge as judges of the Domestic Relations Division of the Lorain County Court of Common Pleas. The bill amends the provision that currently specifies that there are eight judges of the Lorain County Common Pleas Court, not counting the Probate Judge of that Court, so that the provision will specify that there are ten judges of the Lorain County Common Pleas Court. One of the newly specified judges will serve in the new judgeship the bill creates in the Court's General Division (see "**Creation of new general division judgeship for Lorain County Court of Common Pleas**," below), and the bill specifies that the other newly specified judge is to be elected in 2008, term to begin February 9, 2009. The bill specifies that the judge whose term will begin on February 9 is to be elected and designated as a judge of the Domestic Relations Division of the Court, with all the powers and jurisdiction of the judges currently serving in that division, as described above in "**Lorain County Court of Common Pleas**" under "**Existing law**." It also specifies that the judge whose term will begin on February 9 is the successor to the Probate Judge of the Lorain County Common Pleas Court who was elected in 2002 for a term that began on February 9, 2003. (R.C. 2301.02(B) and (C) and 2301.03(C)(1)(a) and (c).)

Transitional provisions regarding probate and domestic relations matters. Regarding its expansion of the jurisdiction of the Lorain County Court of Common Pleas Domestic Relations Division to include probate matters, the bill specifies that (R.C. 2101.01(B) and 2301.03(C)(2)):

(1) From January 1, 2006, through February 8, 2009, with respect to Lorain County, all references in law to the probate court must be construed as

references to both the Probate Court and the Domestic Relations Division of the Lorain County Court of Common Pleas, and all references in law to the probate judge must be construed as references to both the Probate Judge and the judges of the Domestic Relations Division of the Lorain County Court of Common Pleas.

(2) On and after February 9, 2009, with respect to Lorain County, all references in law to the probate court must be construed as references to the Domestic Relations Division of the Lorain County Court of Common Pleas, and all references to the probate judge must be construed as references to the judges of the Domestic Relations Division of the Lorain County Court of Common Pleas.

(3) On and after February 9, 2009, with respect to Lorain County, all pleadings, forms, journals, and other records filed or used in probate matters must be entitled, "In the Court of Common Pleas, Domestic Relations Division," but are not defective if entitled "In the Probate Division" or "In the Probate Court."

(4) On and after February 9, 2009, with respect to Lorain County, all references in law to the clerk of the probate court must be construed as references to the judge who is serving pursuant to Rule 4 of the Rules of Superintendence for the Courts of Ohio as the Administrative Judge of the Domestic Relations Division of the Lorain County Court of Common Pleas (see **COMMENT 2**).

Creation of new general division judgeship for Lorain County Court of Common Pleas. The bill creates a new judgeship for the Lorain County Court of Common Pleas. The new judgeship initially will be filled at the 2006 general election, and the judge's term will begin January 6, 2007. (R.C. 2301.02(B).)

The judge is not identified as a judge of the Court's Domestic Relations Division or Probate Division (under R.C. 2101.01 and 2301.03(C), as described above), so the judge will be a judge of the General Division of the Court.

Morrow County Court of Common Pleas

Existing law

Currently, the Morrow County Court of Common Pleas has one judge. The judge was elected in 2004 and is serving a term that commenced on January 1, 2005 (i.e., this judge is the successor to the judge who was elected in 1956 and whose term began on January 1, 1957). This judge serves in all judicial capacities for the Court, including as the judge of the Probate Division and as the Juvenile Judge. (R.C. 2301.02(A) and the last paragraph of (C), and R.C. 2151.011(A)--not in the bill.)

Operation of the bill

The bill creates a new judgeship for the Morrow County Court of Common Pleas. The new judgeship initially will be filled at the 2006 general election, and the judge's term will begin January 1, 2007. (R.C. 2301.02(A).)

The current judge of the Morrow County Court of Common Pleas, and the successors to that judge, will continue as the judge of the Probate Division and as the Juvenile Judge (R.C. 2301.02(A) and the last paragraph of (C), and R.C. 2151.011(A)--not in the bill).

The bill does not specify any special jurisdiction for the new judgeship it creates, so the judge who fills it will be a judge of the General Division of the Morrow County Court of Common Pleas.

COMMENT

1. Several provisions of existing law specify different procedures regarding probate judges in certain counties: (1) R.C. 2101.021 provides for an additional probate judge for Cuyahoga County, (2) R.C. 2101.022 provides special domestic relations-juvenile-probate authority for the judge of the Probate Division of the Marion County Court of Common Pleas who was elected in 2003 and that judge's successors, (3) R.C. 2101.023 provides that the judge of the Erie County Court of Common Pleas who will be elected in 2008, and that judge's successors, will be the successor to the judge of the Probate Division of that Court whose term expires on February 8, 2009, and will be designated a general division judge with expanded powers including those regarding probate matters, and (4) R.C. 2101.024 provides that the Probate Judge of the Logan County Court of Common Pleas has special domestic relations-juvenile-probate authority.

2. Existing R.C. 2101.11, not in the bill, provides that the probate judge has the care and custody of the papers, books, and records belonging to the probate court and that the probate judge is authorized to perform the duties of the clerk of the judge's court.

Existing Rule 4 of the Rules of Superintendence for the Court of Ohio, not in the bill, provides in relevant part that, in each multi-judge division of a court of common pleas, the judges of the division, by a majority vote of the judges of the division, must elect an Administrative Judge from the judges of the division. If the judges of a division are unable to elect an Administrative Judge, the judge of the division having the longest total service on the division serves as Administrative Judge for one term. If two or more judges have equal periods of service on the division, the Administrative Judge must be determined by lot from the judges with equal periods of service. In the event of a continued failure to

elect an Administrative Judge, the judges of the division rotate the position based on the order of seniority as determined by the total length of service on the division. The term of the Administrative Judge is one year beginning on January 1. An Administrative Judge may be elected to consecutive terms and also may serve as presiding judge. The Administrative Judge has full responsibility and control over the administration, docket, and calendar of the division and is responsible to the Chief Justice of the Supreme Court in the discharge of his or her duties, for the observance of the Rules of Superintendence, and for the termination of all cases in the division without undue delay and in accordance with the time guidelines set forth in Superintendence Rule 39. The actions of the Administrative Judge may be modified or vacated by a majority of the judges of the division. The Administrative Judge must: (a) pursuant to Superintendence Rule 36, assign cases to individual judges of the division, (b) require timely and accurate reports from each judge of the division concerning the status of individually assigned cases and from judges and court personnel concerning cases assigned to particular sessions, (c) timely file all Administrative Judge reports required by the Court Statistical Reporting Section, (d) develop accounting and auditing systems within the division and the office of the clerk of the court that ensure the accuracy and completeness of all reports required by the Rules of Superintendence, (e) request, as necessary, the assignment of judges to the division by the Chief Justice of the Supreme Court or the presiding judge of the Court, (f) administer personnel policies established by the division, (g) perform other duties as required by the Revised Code, the Rules of Superintendence, local rules of the division, or the Chief Justice of the Supreme Court, and (h) perform any other duties in furtherance of the responsibilities of the Administrative Judge.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-10-05	p. 492
Reported, S. Judiciary on Criminal Justice	---	---

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