



S.B. 149

126th General Assembly
(As Introduced)

Sen. Grendell

BILL SUMMARY

- Creates the Judicial Appointment Review Commission to make nonbinding recommendations to the Governor for the appointment of persons to fill certain judicial vacancies.
- Defines "engaged or engaging in the practice of law" for candidate qualification purposes for judicial offices, increases the required number of years of judicial experience or years of engaging in the practice of law that 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 for the court of common pleas judges of that county.
- Requires the Supreme Court to establish a judicial candidate qualification program for candidates for judicial office.
- Increases the terms of office of judges of the courts of common pleas from six to eight years, courts of appeals from six to ten years, and the Supreme Court from six to 12 years.

CONTENT AND OPERATION

Judicial appointment review commission

Background law

Under current law, when the office of a judge is vacant *at the expiration* of the term of the incumbent (because no person was elected as the judge's successor), 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, as a general rule, a successor is elected. A successor generally 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, however, if the unexpired term ends within one year after that general election. (Ohio Const. Art. IV, Section 13.)

Changes proposed by the bill

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 succeed a judge and the judge's term expires or when the office of a judge becomes vacant before the expiration of the judge's regular term. The Commission will consist of seven, nine, or eleven members. The Governor determines the number of Commission members and appoints them. In making the appointments, the Governor 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 state's population. Not more than a simple majority of the members may be attorneys or may belong to the same political party. Of the initial appointees, a simple majority must be appointed for terms of four years, and the rest must be appointed for terms of two years. Thereafter, all terms will be four years. (R.C. 107.08(B).)

The Governor must choose the Commission's chairperson, who will serve at the Governor's pleasure. The Commission must recommend three persons to fill a vacancy in a judicial office under the circumstances mentioned above. And, the Governor may appoint one of the three recommended persons or another person to fill the vacancy. The Governor may not, however, so appoint a person who served on the Commission within two years before the appointment. (R.C. 107.08(B).)

Qualifications of judges¹

Legal experience

Practice of law definition. Current law generally 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 court of common pleas, a court of appeals, 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. Current 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" is defined as 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) Any other occupation recognized as the practice of law by rules or decisions of the Supreme Court.

Number of years of the practice of law or service as a judge. Under current 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 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 for at least *six years* before an appointment or commencement of a term (R.C. 1901.06, 1907.13, 2301.01, 2501.02, and 2503.01). The bill does not change that number for municipal court or county court judges (R.C. 1901.06(A) and 1907.13).²

¹ As used in this analysis, the term "judge" generally includes the Chief Justice and the other Justices of the Supreme Court. Occasionally, however, specific references are made to the Chief Justice and Justices.

² The County Court Law does not refer to prior judicial service in a court of record. Instead, it requires, as a general rule, a county court judge to have been admitted to the practice of law in Ohio and to have been engaged in that practice for at least six years before an appointment or commencement of a term. (R.C. 1907.13.)

The bill generally increases the required number of years of engaging in the practice of law in Ohio for *court 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. But, it 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 before the election. If the voters 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 number of years of engaging in the practice of law in Ohio, service as a judge of a court of record, or both for judges of the *courts of appeals* from six to 12 and for *Supreme Court* justices from six to 15 (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, a county court, a court of common pleas, a 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, attend one or more courses that are approved by the Supreme Court, total at least 40 hours, and cover 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 (a) each candidate for a particular type of judge take courses required for all judicial candidates and courses required only for candidates for that particular type of judge and (b) 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.

Terms of office

The bill increases the terms of office for judges of the courts of common pleas and the courts of appeals and for the Chief Justice and Justices of the Supreme Court *as the terms of the current judges and justices expire*. The terms of all judges of the *courts of common pleas*, including probate judges, will increase from six to eight years beginning with the 2006 elections, and the terms of *court of appeals* judges will increase from six to ten years beginning with those elections (R.C. 2101.02, 2101.021, 2301.01(B), 2301.02(A), 2301.03(EE), 2501.02, and 2501.021).

The bill increases the terms of office for the Chief Justice and Justices of the Supreme Court from six to 12 years. The increases are phased in so that no more Justices will be elected in any one year than under current law. Specifically, the term of the Chief Justice will increase to 12 years when the Chief Justice's current term expires December 31, 2010. The table below shows the increases in the terms of the other Justices. (R.C. 2503.02 and 2503.03.)

Expiration of current term	Length of term at next election	Year of election when 12-year term begins
12/31/2010	2010 - 10 years	2020
01/01/2011	2010 - 12 years	2010
12/31/2006	2006 - 6 years	2012
01/01/2007	2006 - 8 years	2014
12/31/2008	2008 - 8 years	2016
01/01/2009	2008 - 10 years	2018

Changes not applicable to incumbents

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

Relocation of statutory provisions dealing with court of appeals districts and judges

The state is divided by statute into 12 appellate districts with three judges created by the Ohio Constitution (R.C. 2501.01 and Ohio Const. Art. IV, Section 3) and additional judges created by statute (R.C. 2501.011, 2501.012, and 2501.013). The bill relocates the current provisions dealing with the number of judges in the 12 court of appeals districts and their election and terms of office in one new statute (new R.C. 2501.021 and repeal of R.C. 2501.011, 2501.012, and 2501.013).

HISTORY

ACTION	DATE
Introduced	05-17-05

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