Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 431*

128th General Assembly
(As Reported by S. Judiciary - Civil Justice)

Reps. Okey and Huffman, Garland, Murray, Derickson, Domenick, Stebelton, Skindell, McGregor, DeGeeter, Yuko, Chandler, Fende, Harwood, Coley, Bacon, Batchelder, Beck, Belcher, Blessing, Bolon, Boose, Brown, Bubp, Carney, Combs, Evans, Foley, Garrison, Gerberry, Goyal, Grossman, Harris, Letson, Luckie, McClain, Oelslager, Patten, Pillich, Pryor, Snitchler, B. Williams, Zehringer

BILL SUMMARY

- Consolidates references to costs and fees, other than attorney fees, that apply in courts of record, generally organizes costs and fees according to the courts in which they apply, and cross-references the Revised Code sections that create the costs and fees.

- Repeals the existing provision that provides that the circulator of any part-petition, the committee interested in the petition, or any elector may file with the board of elections a protest against the board's findings and provides procedures for dealing with the protest and instead provides that the Ohio Supreme Court has exclusive, original jurisdiction in all challenges to initiative and referendum petitions.

- Provides that the circulator of any petition must include upon each part-petition filed with the Secretary of State a designation of the county in which the part-petition was circulated and a number for each part-petition and provides that upon the filing of the petition, the circulator must file certain specified information with the Secretary of State.

- Provides that a request for the inspection or copying of an original petition filed with the Secretary of State is fulfilled when the Secretary of State provides inspection of or copies of the electronic copy of the petition filed by the circulator of the petition.

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

- Provides that discrepancies between the electronic copy and the original paper petitions do not render the petition invalid.

- Provides that no additional signatures may be collected by the circulator of a petition until the Secretary of State determines the sufficiency of the signatures that the circulator originally filed with the Secretary of State.

- Requires the Secretary of State or a board of elections, upon receipt of a declaration of candidacy and petition, nominating petition, or other petition related to being a candidate or to a question or issue, to determine the number of part-petitions received, the total number of signatures appearing on the part-petitions, and provide a receipt to the individual who filed the petition identifying the number of part-petitions received and the total number of signatures appearing on the part-petitions.

- Apportions the contribution of the municipal corporations and townships within the territorial jurisdiction of the Stow Municipal Court toward the operating costs of that court on a per capita basis subject to annual caps and imposes an additional court cost of $25 on a defendant who is convicted of or pleads guilty to an offense or violation in a mayor's court within the territorial jurisdiction of the Stow Municipal Court.

- Increases the number of signatures to 100 on a nominating petition for election as a judge of the Hamilton County Municipal Court by electors of the judicial district of the county from which the candidate seeks election rather than electors of the territory of the court, requires that the petition be filed not later 4 p.m. of the day before the day of the primary election, and provides that the petition conform to specified requirements provided for those petitions of candidacy.

CONTENT AND OPERATION

Consolidation of references to fees and costs in courts of record

Existing law provides for the imposition of numerous charges upon parties in civil and criminal lawsuits. In some instances, the charges are for services rendered by private individuals, such as court interpreters, or public officials, such as sheriffs (for service of process, for example) or court clerks (often for furnishing transcripts of judgments or other documents). In other cases, the charges are required in order to pursue a civil action (e.g., filing fees) or are imposed as part of a criminal sentence (e.g., fines or costs of prosecution). The Revised Code characterizes some of these charges as costs that are taxed as part of the judgment, while it refers to others as fees. Occasionally, the Revised Code lists "fees" that are to be taxed as "costs." Some charges

apply in only one court, others in more than one court or in all courts. A few Revised Code sections provide lists of fees that apply to particular officials or in particular courts. For example, R.C. 311.17 has a long list of fees to be charged by the sheriff, and R.C. 2101.16 lists dozens of fees charged by the probate court. However, other charges are scattered throughout the Revised Code and can be hard to locate.

The bill consolidates in eight new Revised Code sections references to the numerous costs and fees, other than fees of receivers (see "**Fees of receivers**," below) and attorney fees, that apply in Ohio's courts of record. The bill does not amend the sections that establish these costs and fees or abolish or create any costs or fees. Rather, the bill organizes existing costs and fees according to the courts in which they apply, and it refers to the Revised Code sections that create them. In essence, the bill provides a reference guide to fees and costs in Ohio's courts.

Organization of fees and costs by court

Every Revised Code section in the bill except R.C. 2746.09 (see "**Fees of receivers**," below) starts with a statement that specifies the court or courts in which the listed costs and fees apply. For example, R.C. 2746.05 begins, "In addition to any applicable fees or costs set forth in sections 2746.01, 2746.02, and 2746.04 of the Revised Code or any other applicable provision of law, a *juvenile court* shall tax as costs or otherwise require the payment of fees for the following services or as compensation for the following persons." This statement is followed by the costs and fees specific to that court or those courts, identified by the Revised Code section where those charges are found. Here, as an illustration, is the list in R.C. 2746.05 for juvenile courts:

(A) The fees provided for in section 2151.54 of the Revised Code;

(B) Additional fees to computerize the court, make available computerized legal research services, and computerize the office of the clerk of the court, as provided in sections 2151.541, 2153.081, and 2301.031 of the Revised Code;

(C) The costs of house arrest with electronic monitoring, as provided in section 2152.19 of the Revised Code;

(D) Witness fees, as provided in section 2151.28 of the Revised Code.

The bill organizes costs and fees according to the courts in which they apply, as follows:

R.C. 2746.01: All courts of record (primarily in civil cases).

R.C. 2746.02: All courts of record (in criminal and juvenile cases and some civil actions related to criminal cases).

R.C. 2746.03: Supreme Court, courts of appeals, Court of Claims (in addition to the charges applicable in all courts of record).

R.C. 2746.04: Courts of common pleas (in certain civil cases, in addition to the charges applicable in all courts of record).

R.C. 2746.05: Juvenile courts (in addition to the charges applicable in all courts of record and the courts of common pleas).

R.C. 2746.06: Probate courts (in addition to the charges applicable in all courts of record and the courts of common pleas, subject to any waiver of fees for combat zone casualties under R.C. 2101.164 and any reduction of fees under R.C. 2101.20[1]).

R.C. 2746.07: Municipal courts (in addition to the charges applicable in all courts of record and the courts of common pleas).

R.C. 2746.08: County courts (in addition to the charges applicable in all courts of record and the courts of common pleas).

The Revised Code sections dealing with municipal and county courts include references to costs and fees named in R.C. 2746.04 (charges applicable in courts of common pleas) because (1) various sections of the Municipal Court Law and County Court Law provide for the imposition of fees or costs in accordance with the statutes that govern courts of common pleas, and (2) R.C. Ch. 2335., although placed in the title that governs courts of common pleas, does not expressly limit to those courts the fees and costs it establishes. Many of these charges apply to trial courts generally.

Fees of receivers

The bill consolidates Revised Code references to the costs, expenses, or fees of receivers in a separate section. These references include costs or expenses expressly allowed to receivers by statute, fees to which a receiver appointed under R.C. 2715.20 (attachment) or 2735.01 (mortgage foreclosure and other specified types of cases) may be entitled, and fees allowed to a receiver under any applicable rule of court. The bill does not amend any of the sections that provide for the appointment, costs, or expenses of receivers. (R.C. 2746.09.)

[1] Under R.C. 2101.20, when the aggregate amount of fees and allowances collected by the probate judge in any calendar year exceeds by more than 10% the amount necessary to pay the salaries of the judge and employees of the court for that year, the judge may discount the fees and allowances the judge is required to charge.

Initiative and referendum petitions

Under existing law, the circulator of any part-petition, the committee interested in the petition, or any elector may file with the board of elections a protest against the board's findings made pursuant to R.C. 3519.15. Protests must be in writing and must specify reasons for the protest. Protests for all initiative and referendum petitions other than those to be voted on by electors throughout the entire state must be filed not later than 4 p.m. of the 74th day before the day of the election. Once a protest is filed, the board must proceed to establish the sufficiency or insufficiency of the signatures and of the verification of those signatures in an action before the court of common pleas in the county. The action must be brought within three days after the protest is filed, and it must be heard forthwith by a judge of that court, whose decision must be certified to the board. The signatures that are adjudged sufficient or the part-petitions that are adjudged properly verified must be included with the others by the board, and those found insufficient and all those part-petitions that are adjudged not properly verified are not included.

The bill repeals this provision and instead provides that pursuant to Section 1g of Article II of the Ohio Constitution, the Ohio Supreme Court has exclusive, original jurisdiction in all challenges to initiative and referendum petitions (R.C. 3519.16(A)).

The bill also provides that the circulator of any petition must include upon each part-petition filed with the Secretary of State a designation of the county in which the part-petition was circulated and a number for each part-petition. In any county where part-petitions are circulated, each part-petition must be numbered sequentially. Upon the filing of the petition with the Secretary of State, the circulator of any petition must also file the following (R.C. 3519.16(B)):

(1) An electronic copy of the petition filed along with a verification that the electronic copy is a true representation of the original paper petition filed with the Secretary of State;

(2) A summary of the number of part-petitions filed per county and the number of signatures on each part-petition;

(3) An index of the electronic copy.

Under the bill, for a request made under R.C. Ch. 149. for the inspection or copying of the original petition filed with the Secretary of State, the request is fulfilled when the Secretary of State provides inspection of or copies of the electronic copy filed by the circulator of the petition. This provision applies from the time of the initial filing of the petition with the Secretary of State and remains applicable until the part-petitions

are returned to the Secretary of State from the local board of elections after a determination of sufficiency of the petition pursuant to R.C. 3519.15. (R.C. 3519.16(C).)

The bill provides that discrepancies between the electronic copy and the original paper petitions as filed with the Secretary of State do not render the petition invalid. Discrepancies between a filed electronic copy and the original paper petition, if the product of fraud, are subject to criminal penalties under R.C. 3599.36. R.C. 3599.36 sets forth the offense of election falsification, a felony of the fifth degree. (R.C. 3519.16(D).)

Under existing law, if the petition is found insufficient because of an insufficient number of valid signatures, the committee must be allowed ten additional days after the notification by the Secretary of State for the filing of additional signatures to the petition. The bill provides that no additional signatures may be collected by the circulator of the petition until the Secretary of State determines the sufficiency of the signatures that the circulator originally filed with the Secretary of State. (R.C. 3519.16(F)(8).)

Receipts identifying number of part-petitions received and total number of signatures appearing on the part-petitions

The bill requires the Secretary of State or a board of elections, upon receipt of a declaration of candidacy and petition, nominating petition, or any other petition for the purposes of becoming a candidate for any nomination or office or for the holding of an election on any question or issue to do both of the following (R.C. 3501.383):

(1) Determine the number of part-petitions received and the total number of signatures appearing on the part-petitions;

(2) Provide a receipt to the individual who filed the petition identifying the number of part-petitions received and the total number of signatures appearing on the part-petitions.

Operating costs for Stow Municipal Court

Under existing law, the current operating costs of a municipal court, other than a county-operated municipal court, that has territorial jurisdiction that extends beyond the corporate limits of the municipal corporation in which the court is located must be apportioned pursuant to R.C. 1901.026 among all of the municipal corporations and townships that are within the territory of the court. Each municipal corporation and each township within the territory of the municipal court must be assigned a proportionate share of the current operating costs of the municipal court that is equal to the percentage of the total criminal and civil caseload of the municipal court that arose in that municipal corporation or township. Each municipal court and each township

then is liable for its assigned proportionate share of the current operating costs of the court. The bill exempts the Stow Municipal Court from this provision. (R.C. 1901.026(A).)

The bill provides that the current operating costs of the Stow Municipal Court must be apportioned pursuant to a new provision created by the bill among all of the municipal corporations and townships that are within the territory of the court. Each municipal corporation and each township within the territorial jurisdiction of the Stow Municipal Court must be assigned a proportionate share of the current operating costs of the municipal court that is equal to that municipal corporation's or township's percentage of the combined populations of all the municipal corporations and townships within the territorial jurisdiction of the court, according to the most recent federal decennial census. Each municipal corporation and each township then is liable for its assigned proportionate share of the current operating costs of the court, subject to the caps set forth below. (R.C. 1901.028(A).)

A municipal corporation or township within the territorial jurisdiction of the Stow Municipal Court, other than the city of Stow, is not required to pay that part of its proportionate share of the current operating costs of the court, as determined in accordance with the provisions described in the preceding paragraph, that exceeds the following caps (R.C. 1901.028(B)(1)):

(1) For each of the calendar years 2010 through 2013, the average amount that the municipal corporation or township paid toward the operating costs of the Cuyahoga Falls Municipal Court for the calendar years 2007 and 2008;

(2) For the calendar year 2014 and each calendar year thereafter, the amount of the previous calendar year's cap plus 3%.

The city of Stow is liable for any part of the operating costs of the Stow Municipal Court that the other municipal corporations and townships within the territorial jurisdiction of the court are not required to pay under these provisions (R.C. 1901.028(B)(2)).

At least once each year, the chief fiscal officer of the city of Stow must determine the proportionate share of the current operating costs of the Stow Municipal Court due from each municipal corporation and each township within the territorial jurisdiction of the court and must inform the chief fiscal officer of each of those municipal corporations and townships of the amount due. The proportionate share of each municipal corporation and township is payable from the general fund of the municipal corporation or township or from any other fund designated or funds appropriated for the purpose of paying the municipal corporation's or township's proportionate share. (R.C. 1901.028(C).)

The bill provides that the city of Stow cannot bill municipal corporations and townships for amounts due as shares of the operating costs of the Stow Municipal Court for the calendar year 2010 under R.C. 1901.028, as enacted by the bill, until after December 31, 2010 (Section 3).

The Summit County Court of Common Pleas has jurisdiction over any civil action that is commenced to determine the current operating costs of the Stow Municipal Court or the proportionate share of the current operating costs of that court to be paid by a particular municipal corporation or township within the territory of the Stow Municipal Court (R.C. 1901.028(C)).

The bill defines the following terms for the purposes of the above-described provisions (R.C. 1901.028(D)):

(1) "Operating costs" means the amount that is derived by subtracting the total of all costs that are collected and paid to the Stow city treasury by the clerk of the municipal court pursuant to R.C. 1901.31(F), all costs that are paid to the Stow city treasury by the clerk of a mayor's court pursuant to R.C. 1905.06, and all interest that is received and paid to the Stow city treasury pursuant to R.C. 1901.31(G) and that is earned on the costs received pursuant to R.C. 1901.028(F)[2] and 1905.06 from the total of the amounts payable from the Stow city treasury for the operation of the court pursuant to R.C. 1901.10, 1901.11, 1901.111, 1901.12, 1901.13, 1901.311, 1901.312, 1901.32, 1901.33, 1901.331, 1901.36, 1901.37, and 1901.38, other than any amounts payable from the Stow city treasury for the operation of the court involving construction, capital improvements, or rent.

(2) "Township" means a township that has adopted a limited home rule government pursuant to R.C. Ch. 504.

The bill also provides that a mayor's court within the territorial jurisdiction of the Stow Municipal Court in which a person is convicted of or pleads guilty to any offense or violation must impose $25 as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender. The court cannot waive the payment of the additional court costs established by the above-described provisions unless the court determines that the offender is indigent and waives the payment of all court costs and fines imposed upon the indigent offender.

The clerk of the mayor's court must transmit all money collected under the above-described provisions during a month to the Stow city treasury not later than the

[2] This may be an error in the bill. It is probably supposed to be a reference to R.C. 1901.31(F).

10th business day of the following month for deposit into the general revenue fund of the city of Stow. (R.C. 1905.06.)

Nominating petitions for Hamilton County Municipal Court

Under existing law, in the Hamilton County Municipal Court, the judges must be nominated only by petition. The petition must be signed by at least 50 electors of the territory of the court, which petitions must be signed, verified, and filed in the manner and within the time required by law for nominating petitions for members of council of the city of Cincinnati. The judges must be elected by the electors of the territory of the court at the regular municipal election and in the manner provided by law for the election of judges of the court of common pleas.

The bill modifies this provision by increasing the number of required signatures to 100 electors and provides that those electors be of the judicial district of the county from which the candidate seeks election (rather than the territory of the court). The bill removes the requirement that the petitions be signed, verified, and filed in the manner and within the time required by law for nominating petitions for members of council of the city of Cincinnati and instead requires that the petitions be signed, verified, and filed not later than 4 p.m. of the day before the day of the primary election in the form prescribed by R.C. 3513.261 (nominating petition form). Unless otherwise provided in this provision, the petition must conform to the requirements provided for those petitions of candidacy contained in R.C. 3513.257 (independent candidates statements of candidacy and nominating petitions). The bill also modifies the requirement that the judges be elected by the electors of the territory of the court by instead requiring that the judges be elected by the electors of the relative judicial district of the county. (R.C. 1901.07(C)(4).)[3]

HISTORY

ACTION	DATE
Introduced	02-01-10
Reported, H. Judiciary	03-24-10
Passed House (97-0)	04-14-10
Reported, S. Judiciary - Civil Justice	---

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[3] The amendment to this section is the result of a remedial order in the case of *Mallory v. Eyrich* in the U.S. District Court of the Southern District of Ohio, Western Division, Case Number C-1-86-1056.