Ohio Legislative Service Commission

Bill Analysis

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S.B. 219

130th General Assembly
(As Introduced)

Sens. Obhof and Seitz, Eklund, Jones

BILL SUMMARY

- Abolishes the office of commissioner of the Court of Claims.
- Provides that appeals from decisions of the Attorney General on applications for awards of reparations for economic loss arising from criminally injurious conduct go directly to the Court of Claims, instead of to the Court of Claims commissioners or to a judge of the Court of Claims.
- Transfers the functions with regards to awards of reparations from the Court of Claims commissioners or a single judge of the Court of Claims to the Court.
- Eliminates references to "Court of Claims commissioners" or to "a judge" of the Court of Claims in various provisions of the Court of Claims Law governing awards of reparations.
- Modifies the Attorney General's annual report on the crime victims reparations program to eliminate from separate listings the compensation of judges and court personnel.
- Conforms the time period within which adult crime victims must file reparations claims to other existing law.
- Authorizes the Chief Justice of the Supreme Court to appoint magistrates (rather than referees) in civil actions in the Court of Claims and authorizes a magistrate to disclose or refer to certain records or reports otherwise exempt from public disclosure in reparations hearings.

- Changes the basis of the per diem compensation of a retired judge who serves on the Court of Claims from the annual compensation of a court of appeals judge to the annual compensation of a court of common pleas judge.

- Eliminates the requirements and procedure for filing an affidavit of disqualification for a judge of municipal or county court and instead includes the disqualification of a judge of a municipal or county court or a judge of the Court of Claims within the requirements and procedure for filing an affidavit of disqualification for a judge of the court of common pleas, a probate judge, or a judge of the court of appeals.

CONTENT AND OPERATION

Court of Claims commissioners

The bill abolishes the office of commissioner of the Court of Claims, by repealing current law that provides for the appointment of the commissioners. Under current law, the Supreme Court appoints at least three Court of Claims commissioners to hear and determine all matters relating to appeals from decisions of the Attorney General (AG) regarding the award of reparations for economic loss arising from criminally injurious conduct. Each commissioner must be an attorney who has been licensed to practice law in Ohio for at least three years prior to appointment and serve at the pleasure of the Supreme Court and under the administrative supervision of the Clerk of the Court of Claims. The Supreme Court fixes the compensation of the Court of Claims commissioners, and the compensation is paid out of the Court of Claims Victims of Crime Fund.[1]

Awards of reparations for economic loss arising from criminally injurious conduct

Continuing law requires the AG to make awards of reparations for economic loss arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.[2]

The bill

The bill provides that appeals from decisions of the AG on claims for an award of reparations are to be made to the "Court of Claims," instead of to Court of Claims *commissioners* or *a judge* of the Court in current law.[3] It eliminates all references to "Court

[1] Repeal of R.C. 2743.54.

[2] R.C. 2743.52(A).

[3] R.C. 2743.121, 2743.20, 2743.52(B), and 2743.53.

of Claims commissioners" or to "a judge" of the Court of Claims in the following provisions in current law pertaining to reparations awards:

- Duties of the Clerk of the Court of Claims.[4]
- Order of a panel of commissioners or judgment of a judge of the Court of Claims concerning an OVI violation not to be used as basis for, or evidence in, any criminal or civil action.[5]
- Compensation of the commissioners and administrative expenses of appeals derived from the Court of Claims Victims of Crime Fund.[6]
- Determination of claims for an award of reparations and the location where the panel of commissioners sits.[7]
- Grounds for denying a claim for an award of reparations or for reducing an award; award to a minor dependent of a deceased victim.[8]
- Applicability of certain provisions pertaining to reparations.[9]
- Requirements and procedure for an appeal to the panel of commissioners from an award of reparations, the amount of an award, or the denial of an award made by a final decision of the AG after any reconsideration.[10]
- Confidentiality of records or reports; mental or physical examination of a victim or claimant; medical or psychological reports relating to the injury for which an award is claimed; evidence of victim's sexual activity generally not permitted.[11]

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[4] R.C. 2743.09(B), (D), and (E).

[5] R.C. 2743.52(C).

[6] R.C. 2743.531.

[7] R.C. 2743.55.

[8] R.C. 2743.60.

[9] R.C. 2743.601.

[10] R.C. 2743.61(B).

[11] R.C. 2743.62(A)(2)(a), (B), (D), and (E).

- Petition by AG for an order necessary to carry out its powers and duties, including a finding of contempt.[12]
- Effect of criminal prosecution or conviction.[13]
- Attorney's fees with or without filing an appeal.[14]
- Payment of an award of reparations in lump sum or in installments or to a person under 18 years of age.[15]
- Emergency awards.[16]
- Applications for supplemental reparations.[17]
- Annual report.[18]

Current law

Under current law, a Court of Claims *panel of commissioners or a judge* of the Court of Claims has appellate jurisdiction to order awards of reparations for economic loss arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.[19] A Court of Claims *panel of commissioners* hears and determines all matters relating to appeals from decisions of the AG regarding the award of reparations. *A judge of the Court of Claims hears and determines all matters relating to appeals from decisions or orders of a panel of commissioners.*[20]

Current law provides that the AG or a claimant may appeal an award of reparations, the amount of an award of reparations, or the denial of a claim for an award of reparations that is made by a panel of Court of Claims commissioners. If the

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[12] R.C. 2743.63.

[13] R.C. 2743.64.

[14] R.C. 2743.65(A).

[15] R.C. 2743.66(A) and (E).

[16] R.C. 2743.67.

[17] R.C. 2743.68.

[18] R.C. 2743.69.

[19] R.C. 2743.52(B).

[20] R.C. 2743.53.

determination of the panel of commissioners with respect to any claim for an award of reparations is appealed, *a judge* of the Court of Claims hears and determines the appeal on the basis of the record of the hearing before the commissioners, including the original award or denial made by the AG, any information or documents presented to the panel of commissioners, and any briefs or oral arguments that may be requested by the judge. If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge must reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of the Court of Claims is final.[21]

If a notice of appeal is not filed within 30 days after the date on which the award or the denial of a claim is made by a final decision of the AG, the award or denial of the claim is final unless a *panel of commissioners* in the interests of justice allows the appeal. The AG or a claimant must file a notice of an appeal concerning an order or decision of a *panel of commissioners* within 30 days after the date on which the award or the denial of a claim is made by the panel. If no notice of appeal is filed within the 30-day period, the award or denial of the claim is final unless a judge of the Court of Claims in the interests of justice allows the appeal.[22]

Current law requires a *panel of commissioners* to render its decisions as to claims for an award of reparations in writing and include separate findings of fact and any conclusions of law that are necessary. Orders as to claims for an award of reparations must be entered on the journal, and the clerk must certify on the order the date of journalization and send copies of the order and decision to the claimant, the AG, and the prosecuting attorney of the county in which the criminally injurious conduct occurred. A judge of the Court of Claims must render the judge's decisions as to appeals from decisions of a panel of commissioners in writing and include a separate finding for each issue contested upon appeal.[23]

Under current law, the Court of Claims has jurisdiction to hear appeals from the decisions of the Court of Claims commissioners. Such an appeal must be heard and determined by one judge of the Court of Claims.[24] The decision of the Court of Claims

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[21] R.C. 2743.61(C).

[22] R.C. 2743.61(D) and (E) in current law.

[23] R.C. 2743.121(A) and (B).

[24] R.C. 2743.03(A)(1) and (C)(4). An apparent error in the bill is that the reference to "one judge" in R.C. 2743.03(C)(4) is not deleted.

with respect to an appeal from a decision of the Court of Claims commissioners is final.[25]

Annual report

The bill modifies current law by providing that the AG's annual report of the activities of the Ohio crime victims compensation program must include, among other provisions, the amount that has been withdrawn from the Reparations Fund, including separate listings of the administrative costs incurred by the AG and the *Court of Claims* (instead of "a court of claims panel of commissioners"), the amount awarded as attorney's fees, and the amount of certain payments. The bill eliminates from those separate listings the "compensation of judges and court personnel."[26]

Period for filing reparations applications

Continuing law provides that applications for an award of reparations must be filed as follows: (1) if the victim of the criminally injurious conduct was a minor, within two years of the victim's 18th birthday or within two years from the date a complaint, indictment, or information is filed against the alleged offender, whichever is later, or (2) if the victim of the criminally injurious conduct was an adult, *at any time after the occurrence of the criminally injurious conduct*.[27] The bill corrects an inconsistency and wrong cross-reference that appears in the current statute requiring the AG to provide to victims information explaining awards of reparations. The information provided currently reflects an incorrect time period for making reparations applications.[28]

Court of Claims magistrates

Civil actions against the state generally

Under continuing law, a civil action against the state must be heard and determined by a single judge. Upon application by the claimant or the state, the Chief Justice of the Supreme Court may assign a panel of three judges to hear and determine a civil action presenting novel or complex issues of law or fact. Concurrence of two members of the panel is necessary for any judgment or order. Under the bill, the Chief Justice may appoint *magistrates*, instead of referees in current law, in accordance with

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[25] R.C. 2743.20.

[26] R.C. 2743.69(A)(3).

[27] R.C. 2743.56, not in the bill.

[28] R.C. 2743.71(B)(2).

Civil Rule 53 to hear such case if the Chief Justice believes an equitable resolution of a case will be expedited.[29]

Claims for awards of reparations

The bill modifies current law by providing that a judge of the Court of Claims, a *magistrate* (instead of panel of commissioners), a claimant, a claimant's attorney, or the AG may disclose or refer to certain records or reports that are otherwise exempt from public disclosure under the Public Records Law, in any hearing conducted on a claim for an award of reparations or in the judge's, *magistrate's* (instead of panel of commissioners'), claimant's, or AG's written pleadings, findings, recommendations, and decisions.[30]

Per diem compensation of retired judge for service in Court of Claims

The bill provides that a retired judge, in addition to the judge's retirement allowance, must receive per diem compensation for service as a member of the Court of Claims at a rate computed on the annual compensation of *a judge of a court of common pleas* (instead of a judge of a court of appeals under current law).[31]

Affidavit of disqualification of municipal or county court judge or judge of the Court of Claims

Overview of the bill

The bill repeals and replaces current law's requirements and procedure for filing an affidavit of disqualification of a *municipal or county court judge* and enacts new requirements and procedures specifically for filing an affidavit of disqualification of a *judge of the Court of Claims*. Under the bill, the requirements and procedures for the filing of an affidavit of disqualification of a municipal or county court judge or a judge of the Court of Claims who allegedly is interested in a proceeding before the respective court, allegedly is related to or has a bias or prejudice for or against a party to a proceeding pending before the judge or a party's counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the judge are the same as current law's requirements and procedures for the filing of an affidavit of disqualification of a judge of the court of common pleas, a probate court judge, or a judge of the court of appeals.[32]

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[29] R.C. 2743.03(C)(2).

[30] R.C. 2743.62(A)(2)(b).

[31] R.C. 2743.04.

[32] R.C. 2701.03, 2701.031, and 2743.041.

Filing and contents of affidavit of disqualification

An affidavit of disqualification must be filed with the Clerk of the Supreme Court not less than seven calendar days before the day on which the next hearing in the proceeding is scheduled and must include all of the following:[33]

(1) The specific allegations on which the claim of interest, bias, prejudice, or disqualification is based and the facts to support each of those allegations;

(2) The jurat of a notary public or another person authorized to administer oaths or affirmations;

(3) A certificate indicating that a copy of the affidavit has been served on the judge of a municipal or county court or judge of the Court of Claims against whom the affidavit is filed and on all other parties or their counsel;

(4) The date of the next scheduled hearing in the proceeding or, if there is no hearing scheduled, a statement that there is no hearing scheduled.

When such an affidavit of disqualification is presented to the Clerk of the Supreme Court for filing, all of the following apply:[34]

- The Clerk must accept the affidavit for filing and forward the affidavit to the Chief Justice.
- The Supreme Court must send notice of the filing of the affidavit to the clerk of the municipal or county court served by the judge if the affidavit is filed against a judge of a municipal or county court, or to the Clerk of the Court of Claims if the affidavit is filed against a judge of the Court of Claims.
- Upon receipt of that notice, the appropriate clerk must enter the fact of the filing of the affidavit on the docket of the proceeding in the municipal or county court or the docket of the proceeding in the Court of Claims.

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[33] R.C. 2701.03(B).

[34] R.C. 2701.03(C)(1).

Acceptance or denial of affidavit of disqualification for filing

The Clerk of the Supreme Court must not accept an affidavit of disqualification presented for filing if it is not timely presented for filing or does not satisfy the requirements of (2), (3), and (4), above.[35]

If the Clerk accepts an affidavit of disqualification for filing, the affidavit deprives the judge against whom the affidavit was filed of any authority to preside in the proceeding until the Chief Justice or a justice of the Supreme Court designated by the Chief Justice, rules on the affidavit. However, a judge against whom an affidavit of disqualification has been filed may preside in the proceeding if, based on the scheduled hearing date, the affidavit was not timely filed. A judge against whom an affidavit of disqualification has been filed may determine a matter that does not affect a substantive right of any of the parties.[36]

If the Clerk of the Supreme Court accepts an affidavit of disqualification for filing, if the Chief Justice or a designated justice of the Supreme Court denies the affidavit of disqualification as described below and if, after the denial, a second or subsequent affidavit of disqualification regarding the same judge and the same proceeding is filed by the same party who filed or on whose behalf was filed the affidavit that was denied or by counsel for that same party, the judge against whom the second or subsequent affidavit is filed may preside in the proceeding prior to the ruling of the Chief Justice or a designated justice on the second or subsequent affidavit.[37]

Ruling on the affidavit of disqualification

If the Clerk of the Supreme Court accepts an affidavit of disqualification for filing and if the Chief Justice or a designated justice of the Supreme Court determines that the interest, bias, prejudice, or disqualification alleged in the affidavit does not exist, the Chief Justice or the designated justice must issue an entry denying the affidavit of disqualification. If the determination is that the interest, bias, prejudice, or disqualification alleged in the affidavit exists, the Chief Justice or the designated justice must issue an entry that disqualifies that judge from presiding in the proceeding and either order that the proceeding be assigned to another judge of the court of which the disqualified judge is a member, to a judge of another court, or to a retired judge.[38]

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[35] R.C. 2701.03(C)(2).

[36] R.C. 2701.03(D)(1), (2), and (3).

[37] R.C. 2701.03(D)(4).

[38] R.C. 2701.03(E).

Current law

Current law provides that an affidavit of disqualification of a municipal or county court judge must be filed with the clerk of the court in which the proceeding is pending not less than seven calendar days before the day on which the next hearing in the proceeding is scheduled and must include the same items as described above in (1) to (4) under "**Filing and contents of affidavit of disqualification**." The clerk must enter the fact of the filing on the docket in that proceeding and provide notice of the filing of the affidavit to the presiding judge of the court of common pleas of the county or, if there is no such presiding judge, a judge of the court of common pleas of the county. Current law has similar provisions as described above in "**Acceptance or denial of affidavit of disqualification for filing**," except that the clerk of the municipal or county court performs the described functions. The judge who is notified of the affidavit makes the determination and the ruling described above in "**Ruling on the affidavit of disqualification**."[39]

HISTORY

ACTION	DATE
Introduced	10-29-13

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[39] R.C. 2701.031(B) to (E), repealed.