



Judicial Impact Statement

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Judicial Compensation

Seeking Sponsor

TITLE INFORMATION

Ohio judges support a review of judicial compensation and qualifications, including the method for adjusting judicial salaries.

IMPACT SUMMARY

The Ohio Judicial Conference supports legislation that will enhance the quality of judicial candidates and increase public confidence in the judiciary. We believe that this will require judicial salaries that are competitive with market salaries of the best qualified lawyers and that is consistent with judicial salaries in states that are comparable to Ohio.¹

BACKGROUND

Ohio Constitution. The Ohio Constitution authorizes the Ohio General Assembly to set judicial salaries, with the exception that the compensation paid to judges “shall not be diminished during their term of office” and that judges of the same rank earn the same amount, regardless of their length of service.

This does not preclude the Ohio General Assembly from creating a salary commission that would be advisory or that would make recommendations to the legislature with those recommendations becoming law if the General Assembly fails to act (amend, reject or adopt) within a specified period of time. The Ohio General Assembly could also link increases in Ohio’s judicial salaries to increases in federal judicial salaries.

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio’s court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

¹ Researchers have indicated that Ohio is best compared with states like Illinois, Pennsylvania, and Michigan. Each is a large, “rust-belt” industrial state that includes major business and commercial centers, productive rural agricultural areas, and a good deal of urban, small-town and rural poverty. In terms of population, Illinois ranks 5th, Pennsylvania 6th, Ohio 7th, and Michigan 8th.

Ohio Experience with Compensation Commissions. Ohio has some limited experience with salary commissions. In 1986-87 an ad hoc commission was appointed by the General Assembly. Nicknamed the “Thomas Commission” after chair Duke Thomas, this Judicial Salary Commission’s recommendations were, in retrospect, relatively well-taken and resulted in increases in judicial salaries, albeit not at the level recommended by the Commission. Upon the submission of their report in 1987, the Thomas Commission disbanded.

In 1996 the 122nd General Assembly (in House Bill 408) created the “Elected Officials Compensation Commission” charged with the evaluation of the “salaries and duties of elected officials to determine whether the salaries of elected officials [were] fair and adequate compensation ... and [to] recommend necessary adjustments.” In July 1997 the Commission recommended a one-time adjustment to judicial salaries. Citing unhappiness with the manner in which the Compensation Commission was making recommendations, the Ohio General assembly repealed Sections 105.61 and 105.62 as part of Senate Bill 220, effective July 1, 1998.

Experience of Other States. Many of the U.S. states have chosen a salary commission to help the legislature set judicial salaries. In 2007 the National Center for State Courts (NCSC) conducted a comprehensive survey of all states to gather information on how judicial compensation is determined. Those results showed that the first state to adopt a compensation commission was Arizona in 1970. By the end of the 1970’s only 3 states had compensation commissions, but the number has grown to 25 today. There were 9 more states that adopted salary commissions in the 1980’s, 6 more added commissions in the 1990’s, and another 6 states added commissions between 2000 and 2007. Since 2007 when the NCSC report was released, New York has adopted a commission. Thus, a plurality of states has adopted the commission method and several other states are considering the commission method. For example, Kentucky, North Carolina, and Pennsylvania have on-going efforts to gain adoption of the commission method.

Judicial Qualification Bills. Historically, Ohio’s judicial salaries lag behind nationally and have gotten increasingly behind since the cost-of-living provisions expired in 2008. Since that time, judicial salaries have remained stagnant and have not kept up with the cost-of-living. During the same period, attorneys in private practice, law professors, and others with a similar educational background and years of experience have greatly surpassed judges in terms of salary earned. In many communities in Ohio, new lawyers in major firms are starting at salaries close to or surpassing that of experienced judges.

To address this problem, the 126th General Assembly introduced companion bills in the Ohio House and Senate, House Bill 266 and Senate Bill 149 respectively. While these bills focused on judicial qualifications and did not contain salary increases or establish a salary commission, the debate over judicial qualifications stimulated a broader discussion of how to improve the judiciary, including whether to establish an objective commission or other mechanism for determining a fair and reasonable salary for judges.

During the 127th General Assembly, House Bill 173 was introduced. House Bill 173 contained provisions to increase judicial salaries, and the conversation continued regarding how to keep these decisions from becoming subject to partisan bickering.

The Judicial Conference recognizes the challenges of the economic recession of the last few years, and understands that salary increases are unlikely in the short run. Nonetheless, a common sense process that routinely addresses this matter at the appropriate times should be institutionalized.

Ohio judges support the development of a judicial salary commission or some other objective mechanism for the routine review of judicial compensation and the implementation of appropriate and timely adjustments to judicial salaries. The Supreme Court should have discretion to include amounts necessary to implement those adjustments in the budget submission of the judicial branch for each biennium and such amounts should be considered by the legislature as a reasonable and necessary element of the overall funding of the judicial branch.

JUDICIAL IMPACT

The National Center for State Courts (NCSC) says that competitive judicial salaries “ensure that one of America’s most important pillars of government, the Judicial Branch, is endowed with the most qualified persons.”² According to their 2010 analysis of judicial compensation, the NCSC reports that current and prospective judicial officials have many lucrative career options that make it difficult for states to recruit and retain the highest qualified public servants. The organization encourages states to place judicial salaries and compensation packages at the forefront of their efforts to recruit and retain judges.

The National Center also reports “an ominous trend in judicial retirements” that suggests that retention of judges is only getting more difficult because the number of justices retiring today under the age of 60 has increased fourfold compared to a decade ago. NCSC says the numbers are “compelling” and that their research supports the conclusion that inadequate judicial compensation is having an impact on recruitment and retention of judges over the long term.

The American Bar Association (ABA) has long supported adequate compensation for judges. The ABA also advocates for regular, independent review of judicial compensation. A 2003 report provides specific guidelines for independent commissions to set state judicial salaries.³ According to the ABA, a compensation commission should be established by constitutional provision or by statute, the commission should set compensation levels for the judiciary alone or, at least, the compensation levels for the

² NCSC, 20th Anniversary Perspective (2010), pp. 14-16.

³ American Bar Association, 2003 Resolution Adopted by the House of Delegates (August 11-12, 2003); American Bar Association, 1990 Standards for Judicial Compensation (1990).

judiciary should be considered separately. Moreover, the ABA recommends that commission members be appointed by leaders of all three branches of government, that it include lawyers and lay members of the public, and that it not include public officials, public employees, or political party officers. The ABA also recommends that the commissioners serve fixed, staggered terms, meet at least once a year, and be required to issue biennial reports and make recommendations with the force of law.

The Ohio Judicial Conference agrees that increasing judicial compensation and having a routine way to make future adjustments will promote a professional and high quality judiciary and enhance public confidence in the Ohio judiciary.

RECOMMENDATION

The Ohio Judicial Conference recommends the addition to the Ohio Revised Code of a new section 141.041 that provides for the creation of a judicial compensation commission.

§141.041. Judicial Compensation Commission

(A) There is hereby established a Judicial Compensation Commission which shall consist of nine members. Two members shall be electors of the state and shall be appointed by the Governor. Two members shall be appointed by the president of the Senate, one of which shall be appointed upon the recommendation of the minority leader of the Senate. Two members shall be appointed by the Speaker of the House of Representatives, one of which shall be appointed upon the recommendation of the minority leader of the House of Representatives. Two members shall be retired or former judges not eligible or currently sitting by assignment pursuant to Article IV, Section 5 of the Ohio Constitution and shall be appointed by the Chief Justice of the Supreme Court. One member shall be appointed by the board of governors of the state bar association.

(B) No member of the Judicial Compensation Commission shall be a state employee or official, an employee of state departments, boards, commissions or agencies or of any political subdivision.

(C) No more than three members of the Judicial Compensation Commission shall be attorneys registered with the Supreme Court.

(D). One member appointed by the Governor, one member appointed by the President of the Senate, one member appointed by the Speaker of the House of Representatives, one member appointed by the Chief Justice and the member appointed by the Ohio state bar association shall be appointed beginning January 1, 2012 to a two year term. One member appointed by the Governor, one member appointed by the President of the Senate, one member appointed by the Speaker of the House of Representatives and one member appointed by the Chief Justice shall be appointed beginning January 1,

2012 to a four year term. Thereafter, members shall be appointed to four year terms. Members are eligible to be reappointed but may not serve more than two full consecutive terms. Any vacancy on the Commission shall be filled in the same manner as the original appointment.

(E) The Commission shall select a chairperson and any other necessary officers and adopt rules to govern its proceedings. The Commission shall meet at the call of the chair or at the request of a majority of members. The Legislative Service Commission shall provide administrative support for the Commission.

(F) The Commission shall study and make recommendations concerning the salary, benefits and retirement to be paid to justices of the Supreme Court and judges of courts of appeal, courts of common pleas and divisions thereof, municipal courts and county courts. The Commission shall establish the salary recommendations based upon:

- (1) Skills and qualifications required for each office;
- (2) Value of compensable service performed by comparable positions in other states and the federal judiciary;
- (3) Compensation of attorneys in the private sector;
- (4) Cost of living;
- (5) Budget limitations;
- (6) Compensation from the state presently received by other public officials in the state;
- (7) Level of overall compensation adequate to attract the most highly qualified individuals in the state, from a diversity of life and professional experiences, to serve in the judiciary without unreasonable economic hardship and with judicial independence unaffected by financial concerns; and
- (8) Any other factors the Commission may consider to be reasonable, appropriate and in the public interest.

(G) Not later than the first day of September of each even-numbered year beginning in 2012, the judicial compensation commission shall submit to the governor, the president of the senate, the speaker of the house of representatives, and the Chief Justice of the Supreme Court a written report and salary and benefit recommendations for the following biennium. The Supreme Court may include in the estimate of revenues and proposed expenditures of the judicial branch of the state submitted to the Director of Budget and Management pursuant to section 126.02 of the Revised Code amounts

necessary to implement those recommendations. The general assembly may adopt, reject, or amend any of the commission's recommendations.

(H) The members of the Commission shall serve without compensation, but each member shall be reimbursed for the member's actual and necessary expenses incurred in the performance of the member's official duties on the Commission. Such reimbursement shall be subject to limitations in regulations adopted by the department of administrative services.