

Gavel to Gavel

A review of state legislation affecting the courts

January 8, 2009

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Focus: Legislative Study of Judicial Selection

The last 4 years have seen more legislation in more states related to judicial selection than at any time in recent memory. Several state legislatures deferred acting on legislation in their last session, instead opting for legislative study committees and commissions to look into the subject.

Georgia: [HR 47](#) created a House Joint Legislative Study Committee on Judicial Election Reform "to undertake a thorough study, assessment, and evaluation of the conduct of judicial campaigns in Georgia to determine if the independence and impartiality of the courts are threatened by the conduct of recent campaigns." The committee was also tasked with examining the role of 527 groups in judicial elections and how conflicts of interest due to campaign contributions are handled by the courts. Attached to the Committee was a 17 member Advisory Board, including the Chief Justice, Chief Judge of the Court of

Appeals, state Bar president, the Secretary of State, the leaders of the state trial judges and lawyers associations, as well as the heads of the state Chamber of Commerce, the Medical Association, and Independent Insurance Agents, An additional three nonlawyers were appointed by the Governor. The Advisory Board was assigned the task of providing the committee expert and lay advice from judges, academics, lawyers and anyone who would be "directly affected by any alteration of the existing mode of [judicial] campaign finance." The Committee's final meeting was [January 8](#), with their final report due by the start of the legislative session (i.e. January 12)

Indiana: In 2007, two separate bills ([HB 1341](#) and [HB 1571](#)) were introduced to end merit selection in St. Joseph County. Neither made it out of committee. Meanwhile, SB 329 of 2008 began as an effort to modify the state's judicial pension system(s). At least two amendments ([329-1](#) and [329-2](#)), both almost identical to the bills that failed in the prior session, were proposed to the pension bill. While the floor amendment effort failed in a [45-49 House vote](#), a conference committee amendment required the Commission on Courts to study the issue. [In their report](#), the Commission rejected the



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effort to end merit selection in St. Joseph County on a 7-2 vote (Finding and Recommendation 8). In dissent, the state representative who had originally attempted to amend the pension bill to end merit selection vowed to reattempt the repeal in the 2009 session. Moreover, the Commission on Courts also recommended the expansion of the merit selection system for Lake Superior Court County Division judges currently subject to partisan elections (Finding and Recommendation 7) on a 9-0 vote.

North Dakota: [HCR 3002 of 2007](#) directed that state's Legislative Council study the state's judicial election and judicial selection process and conduct a public information and education program with the State Bar, with a report and recommendation to be submitted to the 2009 Legislature.

West Virginia: [SCR 69](#) required the legislature's Joint Committee on Government and Finance "to study judicial selection methods and public financing of judicial elections" and report to the 2009 session.

Selection: Newly Introduced

[Arizona SB 1042](#) Specifies it is the presiding judge of the superior court in *Maricopa County* that may appoint a court commissioner to serve in the tax court. Prefiled.

[Missouri HJR 10 \(Constitutional Amendment\)](#) Increases from three to five the number of judicial candidates nominated by the Nonpartisan Judicial Commission. Permits Governor to veto the first list. If the Governor fails to appoint any of the nominees from a second list, the Lieutenant

Governor must appoint a nominee from the second list. If the Lieutenant Governor fails to do so, the commission will appoint. All selections subject to Senate confirmation. Alters composition of Appellate Judicial Commission: 3 Missouri Bar members selected from Bar membership, 4 non-attorneys selected by Governor. Alters composition of circuit judicial commissions: 2 Missouri bar members selected from Bar membership in circuit, 3 non-attorneys selected by Governor. Requires all hearings, debates, and votes of the commissions be open to the public and to the press with no less than 72 hours public notice given before each meeting. Requires list of applicants for any judicial vacancy be open to the public with their names posted on the web site of the Missouri Supreme Court and all information available to the respective commissions on the judicial candidates must be made available to the Governor. Requires every applicant nominated be subject to a background check, including a criminal check, which will not be a public record, but available only to the commission and the Governor. Removes power to approve expenses incurred in the administration of the judicial selection plan from the Missouri Supreme Court to the Commissioner of the Office of Administration. Prefiled.

[Tennessee HB 26](#) Adds one nonlawyer to judicial selection commission thereby increasing the membership of the commission from 17 to 18 persons. Prefiled.

Selection: Floor and Committee Activity

NONE

Qualifications and Terms: Newly Introduced

NONE

Qualification and Terms: Floor and Committee Activity

NONE

Rule Making Authority: Newly Introduced

[Arkansas HB 1033](#) Repeals Reporter of the Supreme Court's power to omit decisions from publication. Repeals requirement that published volumes of Supreme Court and Court of Appeals decisions be delivered to state and local officials and permits destruction of published volumes if available electronically. Requires all opinions be available for free online. Permits Reporter of the Supreme Court to oversee publication and distribution of the decisions of the Supreme Court and the Court of Appeals in such format and medium as the Supreme Court may direct. Prefiled.

[Nebraska LB 7](#) Specifies a clerk of the district court need not be a resident of the county when he or she files for election but must reside in a county for which when he or she holds office. Introduced (no committee).

[Wyoming HB 55](#) Permits the state supreme court, based on caseload studies, to determine where within a circuit the circuit court judge shall reside. Prefiled.

Rule Making Authority: Floor and Committee Activity

NONE

Structure Changes: Newly Introduced

[Indiana SB 35](#) Creates a Sixth District of the Court of Appeals with 3 judges. Sixth District to sit in Indianapolis and have statewide jurisdiction. In Senate Committee on Judiciary.

Structure Changes: Floor and Committee Activity

NONE

Jurisdiction: Newly Introduced

[Indiana HB 1120](#) Provides that a court with criminal or juvenile jurisdiction may establish a problem solving court for alternative treatment and rehabilitation. In House Committee on Judiciary.

[Indiana SJR 4 \(Constitutional Amendment\)](#) Prohibits any state court from issuing a mandate, an order, or another writ requiring the state or a political subdivision of the state to expend money for the operation of any court of the state. In Senate Committee on Judiciary.

Jurisdiction: Floor and Committee Activity

NONE

Salary and Budget: Newly Introduced

[Indiana SB 121](#) Provides that in all civil, criminal, infraction, and ordinance violation actions, the clerk of the court shall collect an automated record keeping fee and sets the

fee amount(s). In Senate Committee on Judiciary.

[Kentucky HB 80](#) Removes 'special districts' as an eligible unit of local government for the provision of court facilities. Prefiled.

[Kentucky HB 142](#) Allows judges eligible to elect participation in the Senior Status Program for Special Judges as of January 31, 2009, to elect participation in the program after January 31, 2009. Adjusts related retirement benefits provisions but requires they commit to serve as a special judge when appointed by the Chief Justice for 120 days a year for a five year period without additional compensation. In House (no committee).

[North Dakota HB 1148](#) Permits state auditor to conduct audit with respect to clerk of district court services provided by a county upon the request of the state court administrator. Prefiled.

[North Dakota HB 1173](#) Authorizes public employees retirement system board to create a trust health care savings plan for all supreme and district court judges participating in the public employees retirement system. Prefiled.

Salary and Budget: Floor and Committee Activity

NONE

Other: Newly Introduced

[Indiana SB 44](#) Requires the attorney general to represent a court that has issued

an order of mandate for funds for the operation of the court or court-related functions. Prohibits the state from reimbursing a judge for expenses incurred in employing a private attorney to represent the court in an action for mandate of funds. In Senate Committee on Judiciary.

[Indiana SB 122](#) Various provisions concerning courts. Repeals laws concerning the establishment and operation of county courts. (As of January 1, 2009, no county court will exist in Indiana.) Removes references to municipal courts. (Municipal courts ceased to exist on January 1, 1996.) Allows former holders of a judicial office who served at least four consecutive years as a judge or justice to serve as private judges. (Current law allows only former judges of circuit, superior, criminal, probate, municipal, or county courts to serve as private judges.) Allows domestic relations cases to be assigned to private judges. In Senate Committee on Judiciary.

[Indiana SB 245](#) Provides that a circuit court clerk is not personally liable for acts or omissions in the performance of the clerk's duties absent gross negligence or intentional disregard of the responsibilities of the office of clerk. In Senate Committee on Corrections, Criminal, and Civil Matters.

[New Mexico HB 28](#) Prohibits intimidation of a criminal justice official, their staffs and families. Prefiled.

Other: Floor and Committee Activity

NONE