

HOUSE BILL No. 1298

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-33-71.

Synopsis: St. Joseph superior court. Changes the membership of the St. Joseph superior court judicial nominating commission and commission on judicial qualifications as follows: (1) Eliminates one of the three elected attorney members. (2) Eliminates all three of the appointed nonattorney members. (3) Adds the judge of the St. Joseph circuit court, the judge of the St. Joseph probate court, the president of the board of St. Joseph County commissioners, the sheriff of St. Joseph County, the mayor of South Bend, and the mayor of Mishawaka. Requires a judge of the St. Joseph superior court (court) to retire upon becoming 75 years of age. Allows a judge of the court serving on June 30, 2014, who is 75 years of age or will become 75 years of age before the judge's term will expire to continue to serve as judge of the court for the remainder of the judge's term. Provides that if at least 40% of the electors voting on the question of retention of a judge of the court is against retention, the judge is rejected. (Current law requires a majority of the electors voting on the question to vote against retention to reject a judge.) Makes conforming amendments.

Effective: June 30, 2014; July 1, 2014.

Wesco, McMillin

January 15, 2014, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1298



A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-33-71-30 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 30. (a) The judicial
3 nominating commission (referred to as the "commission" in this
4 chapter) consists of ~~seven (7)~~ **nine (9)** members, the majority of whom
5 shall form a quorum. The chief justice shall appoint a justice of the
6 supreme court or a judge of the court of appeals to serve as a member
7 and chairman of the commission until a successor is appointed. Those
8 admitted to the practice of law in Indiana and residing in St. Joseph
9 County or maintaining their principal law office in St. Joseph County
10 shall elect, under sections 32 and 33 of this chapter, ~~three (3)~~ **two (2)**
11 of their number to serve as attorney members of the commission. If any
12 attorney member of the commission terminates residence in St. Joseph
13 County or discontinues the maintenance of a principal law office in St.
14 Joseph County, the member shall be considered to have resigned from
15 the commission. The ~~three (3)~~ **six (6)** remaining members of the
16 commission ~~must be persons not admitted to the practice of law~~



1 (referred to as "nonattorney members" in this chapter) and residents of
 2 St. Joseph County. However, not more than two (2) of the nonattorney
 3 members may be from the same political party and that the
 4 appointment of the nonattorney members of the commission shall be
 5 made under section 31 of this chapter. Not more than four (4)
 6 commission members may be from the same political party. are as
 7 follows:

- 8 (1) The judge of the St. Joseph circuit court.
 9 (2) The judge of the St. Joseph probate court.
 10 (3) The president of the board of St. Joseph County
 11 commissioners.
 12 (4) The sheriff of St. Joseph County.
 13 (5) The mayor of South Bend.
 14 (6) The mayor of Mishawaka.

15 (b) Except for a member of the commission listed in subsection
 16 (a)(1) through (a)(6), a member of the commission may not hold any
 17 other salaried public office nor an office in a political party
 18 organization. A member of the commission is not eligible for
 19 appointment to a judicial office in St. Joseph County who has, within
 20 four (4) years immediately preceding an appointment, served on the
 21 commission. If any nonattorney member of the commission terminates
 22 residence in St. Joseph County, the member is considered to have
 23 resigned from the commission.

24 SECTION 2. IC 33-33-71-30.1 IS ADDED TO THE INDIANA
 25 CODE AS A NEW SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JUNE 30, 2014]: **Sec. 30.1. (a) Notwithstanding any
 27 other provision of this chapter:**

- 28 (1) the terms of the three (3) nonattorney members of the
 29 commission:
 30 (A) appointed under this chapter; and
 31 (B) serving on June 30, 2014;
 32 expire July 1, 2014; and
 33 (2) the term of the attorney member of the commission:
 34 (A) elected under this chapter; and
 35 (B) who received the least number of votes in the election
 36 held under section 33 of this chapter for the three (3)
 37 attorney members serving on June 30, 2014;
 38 expires July 1, 2014.

39 (b) This section expires July 2, 2014.

40 SECTION 3. IC 33-33-71-31 IS REPEALED [EFFECTIVE JULY
 41 1, 2014]. **Sec. 31. (a) The appointment to membership on the
 42 commission of the nonattorney members shall be made by a selection**



1 committee consisting of the judge of the St. Joseph circuit court, the
 2 president of the board of St. Joseph County commissioners, and mayors
 3 in each of the two (2) cities having the largest populations in St. Joseph
 4 County. These appointments shall be made by a majority vote of the
 5 selection committee. If a vacancy occurs on the commission among the
 6 nonattorney members, that fact shall be reported to the judge of the St.
 7 Joseph circuit court by the commission. Upon notification, the judge of
 8 the St. Joseph circuit court shall call into session the selection
 9 committee, which shall, by majority vote, select a person or persons not
 10 admitted to the practice of law, who shall serve the unexpired term of
 11 the vacant commission membership position and that this selection and
 12 appointment by the selection committee shall be made within sixty (60)
 13 days after the date the St. Joseph circuit court is notified of the creation
 14 of the vacancy. If the selection committee fails to act to fill an
 15 unexpired term of a nonattorney member of the commission within
 16 sixty (60) days after the notification that the vacancy exists, the
 17 vacancy shall be filled by a majority vote of the remaining members of
 18 the commission.

19 (b) Not less than sixty (60) days before the expiration of the term of
 20 a nonattorney member of the commission, the judge of the St. Joseph
 21 circuit court shall call into session the selection committee that shall
 22 appoint, by a majority vote, a person to the commission to serve a new
 23 term. If the selection committee fails to act to fill an expired term of a
 24 nonattorney member of the commission by the date of expiration of the
 25 term of a nonattorney member of the commission, the remaining
 26 members on the commission shall, by majority vote, appoint a person
 27 to serve for the succeeding term. All appointments made to the
 28 commission shall be certified within ten (10) days to the clerk of the St.
 29 Joseph superior court.

30 (c) Each appointee of a nonattorney member to the commission,
 31 except those who fill a vacancy, shall serve for four (4) years.

32 SECTION 4. IC 33-33-71-32 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 32. (a) Each year in
 34 which an attorney member's term expires, those admitted to the practice
 35 of law in Indiana and residing in St. Joseph County (referred to as
 36 "attorney electors" in this chapter) shall elect ~~three (3)~~ **two (2)** of their
 37 number to serve on the commission. Each attorney member of the
 38 commission shall serve for four (4) years. The term of each attorney
 39 member begins on the first day of October following the member's
 40 election. The election day is the date on which the ballots are counted.
 41 During the month before the expiration of each attorney
 42 commissioner's term of office, an election shall be held to fill the



1 succeeding four (4) year term of office.

2 (b) Except when a term of office has less than ninety (90) days
3 remaining, vacancies in the office of an attorney commissioner to the
4 commission shall be filled for the unexpired term of the member
5 creating the vacancy by a special election.

6 SECTION 5. IC 33-33-71-34 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 34. After

8 ~~(1) the attorney members of the commission have been elected,~~
9 ~~and~~

10 ~~(2) the names of the nonattorney commissioners appointed by the~~
11 ~~selection committee have been certified to the secretary of state,~~
12 ~~clerk of the supreme court, and the clerk of St. Joseph superior~~
13 ~~court under this chapter;~~

14 the clerk of St. Joseph superior court shall by regular mail notify the
15 members of the commission of their election ~~or appointment~~; and shall
16 notify the chairman of the commission of the same.

17 SECTION 6. IC 33-33-71-35 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 35. A person who has
19 been elected ~~or appointed~~ to a full four (4) year term upon the
20 commission may not succeed himself or herself or be eligible for
21 election ~~or appointment~~ to the commission for four (4) years after the
22 expiration of the term to which the person was elected. ~~or appointed.~~

23 SECTION 7. IC 33-33-71-36 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 36. (a) When a vacancy
25 occurs in the St. Joseph superior court, the clerk of the court shall
26 promptly notify the chairman of the commission of the vacancy. The
27 chairman shall call a meeting of the commission within ten (10) days
28 following this notice. The commission shall submit its nominations of
29 five (5) candidates for each vacancy and certify them to the governor
30 as promptly as possible, and not later than sixty (60) days after the
31 vacancy occurs. When it is known that a vacancy will occur at a
32 definite future date within the term of the serving governor, but the
33 vacancy has not yet occurred, the clerk shall notify the commission
34 immediately. The commission may within fifty (50) days of the notice
35 of vacancy make its nominations and submit to the governor the names
36 of five (5) persons nominated for the forthcoming vacancy.

37 (b) Meetings of the commission shall be called by the chairman or,
38 if the chairman fails to call a necessary meeting, upon the call of any
39 ~~four (4)~~ **five (5)** members of the commission. The chairman, whenever
40 the chairman considers a meeting necessary, or upon the request by any
41 four (4) members of the commission for a meeting, shall give each
42 member of the commission at least five (5) days written notice by mail



1 of the time and place of every meeting unless the commission at its
2 previous meeting designated the time and place of its next meeting.

3 (c) Meetings of the commission must be held at a place in the St.
4 Joseph County courthouse in South Bend as the clerk of the St. Joseph
5 superior court may arrange.

6 (d) The commission shall act only at a meeting and may act only by
7 the concurrence of a majority of its members attending a meeting. ~~Four~~
8 **(4) Five (5)** members are required to constitute a quorum at a meeting.
9 The commission may adopt reasonable and proper rules and
10 regulations for the conduct of its proceedings and the discharge of its
11 duties.

12 SECTION 8. IC 33-33-71-37 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 37. (a) The commission
14 shall submit only the names of the five (5) most highly qualified
15 candidates from among those eligible individuals considered. To be
16 eligible for nomination as a judge of the St. Joseph superior court, a
17 person must be domiciled in the county of St. Joseph, a citizen of the
18 United States, and admitted to the practice of law in the courts of
19 Indiana.

20 (b) In abiding by the mandate in subsection (a), the commission
21 shall evaluate in writing each eligible individual on the following
22 factors:

- 23 (1) Law school record, including any academic honors and
24 achievements.
- 25 (2) Contribution to scholarly journals and publications, legislative
26 draftings, and legal briefs.
- 27 (3) Activities in public service, including:
28 (A) writings and speeches concerning public or civic affairs
29 which are on public record, including but not limited to
30 campaign speeches or writing, letters to newspapers, and
31 testimony before public agencies;
32 (B) efforts and achievements in improving the administration
33 of justice; and
34 (C) other conduct relating to the individual's profession.
- 35 (4) Legal experience, including the number of years of practicing
36 law, the kind of practice involved, and reputation as a trial lawyer
37 or judge.
- 38 (5) Probable judicial temperament.
- 39 (6) Physical condition, including ~~age~~, stamina and possible
40 habitual intemperance.
- 41 (7) Personality traits, including the exercise of sound judgment,
42 ability to compromise and conciliate patience, decisiveness, and



1 dedication.

2 (8) Membership on boards of directors, financial interest, and any
3 other consideration that might create conflict of interest with a
4 judicial office.

5 **(9) The age of the individual for purposes of section 37.5 of
6 this chapter.**

7 ~~(9)~~ **(10)** Any other pertinent information that the commission feels
8 is important in selecting the best qualified individuals for judicial
9 office.

10 (c) Written evaluations may not be made on an individual until the
11 individual states in writing that the individual desires to hold a judicial
12 office that is or will be created by vacancy.

13 (d) The political affiliations of any candidate may not be considered
14 by the commission in evaluating and determining which eligible
15 candidates shall be recommended to the governor for a vacancy on the
16 St. Joseph superior court.

17 SECTION 9. IC 33-33-71-37.5 IS ADDED TO THE INDIANA
18 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
19 [EFFECTIVE JULY 1, 2014]: **Sec. 37.5. (a) To be eligible for
20 nomination as a judge of the St. Joseph superior court, a person
21 must be less than seventy-five (75) years of age at the time the
22 person would take office.**

23 **(b) A judge of the St. Joseph superior court shall retire upon
24 becoming seventy-five (75) years of age.**

25 **(c) Notwithstanding subsections (a) and (b), a person who is a
26 judge of the St. Joseph superior court:**

27 **(1) serving on June 30, 2014; and**

28 **(2) who:**

29 **(A) is at least seventy-five (75) years of age on June 30,
30 2014; or**

31 **(B) will become seventy-five (75) years of age before the
32 person's term as judge in effect on June 30, 2014, will
33 expire;**

34 **shall continue to serve as judge of the superior court for the
35 remainder of the person's term in effect on June 30, 2014.**

36 SECTION 10. IC 33-33-71-42 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 42. (a) Subject to
38 section 37.5 of this chapter, each judge appointed serves an initial
39 term that begins on the effective date of the judge's appointment and
40 continues through December 31 in the year of the general election that
41 follows the expiration of two (2) years after the effective date of the
42 judge's appointment.**



1 (b) Thereafter, unless rejected by the electorate of St. Joseph County
2 under this chapter **and subject to section 37.5 of this chapter**, each
3 judge of the St. Joseph superior court serves successive six (6) year
4 terms. Each successive six (6) year term begins on the first day of
5 January following the expiration of the preceding initial term or the
6 preceding six (6) year term and continues for six (6) years.

7 SECTION 11. IC 33-33-71-43, AS AMENDED BY P.L.58-2005,
8 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2014]: Sec. 43. (a) The question of the retention in office or
10 rejection of each judge of the St. Joseph superior court shall be
11 submitted to the electorate of St. Joseph County at the general election
12 immediately preceding expiration of the term of that judge.

13 (b) If a judge subject to this chapter does not desire to serve a
14 further term, the judge shall notify the judge's intention in writing to the
15 clerk of the St. Joseph circuit court at least sixty (60) days before the
16 general election immediately preceding expiration of the judge's term
17 in which case the question of the judge's retention in office or rejection
18 may not be submitted to the electorate, and the office is vacant at the
19 expiration of the term.

20 (c) The St. Joseph County election board shall submit the question
21 of the retention in office or rejection of any judge to the electorate of
22 St. Joseph County. The submission of this question is subject to the
23 provisions of IC 3 that are not inconsistent with this chapter.

24 (d) At the general election, the question of the retention in office or
25 rejection of a judge shall be submitted to the electorate of St. Joseph
26 County in the form prescribed by IC 3-11 and must state "Shall Judge
27 (insert name) of the St. Joseph superior court be retained in office for
28 an additional term?"

29 (e) If a **majority at least forty percent (40%)** of the ballots cast by
30 the electors voting on the question is "No", the judge whose name
31 appeared on such question is rejected. The office of the rejected judge
32 is vacant on January 1 following the rejection. The vacancy shall be
33 filled by appointment of the governor under section 40 of this chapter.
34 The name of the rejected judge may not be included among those
35 submitted to the governor. However, the judge's rejection does not
36 disqualify a rejected judge from being considered for another judicial
37 office that becomes vacant.

38 SECTION 12. IC 33-33-71-47 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 47. (a) The commission
40 on judicial qualifications shall meet periodically as necessary to
41 discharge its statutory responsibilities. Meetings of the commission on
42 judicial qualifications shall be called in the same manner as prescribed



1 for the judicial nominating commission. A quorum for the transaction
2 of business is ~~four (4)~~ **five (5)** members.

3 (b) The clerk of the St. Joseph circuit court shall make arrangements
4 for a meeting place in St. Joseph County as the commission may
5 request.

6 (c) The commission on judicial qualifications may act only at a
7 meeting. The commission on judicial qualifications may adopt
8 reasonable and proper rules and regulations for the conduct of its
9 meetings and discharge of its duties.

10 SECTION 13. IC 33-33-71-55 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 55. (a) At the date,
12 time, and place set for hearing, the commission on judicial
13 qualifications may proceed with the hearing whether or not the judge
14 has filed an answer or appears at the hearing.

15 (b) The failure of the judge to answer or to appear at the hearing,
16 standing alone, may not be taken as evidence of the truth of the facts
17 alleged to constitute grounds for censure, retirement, or removal. In any
18 proceeding for involuntary retirement for disability, the failure of the
19 judge to testify in the judge's own behalf or to submit to a medical
20 examination requested by the commission on judicial qualifications
21 may be considered, unless the failure to appear was due to
22 circumstances beyond the judge's control.

23 (c) The proceedings at the hearing shall be reported verbatim.

24 (d) At least ~~four (4)~~ **five (5)** members of the commission on judicial
25 qualifications must be present when the evidence is produced.

26 SECTION 14. IC 33-33-71-60 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 60. If the commission
28 on judicial qualifications finds good cause, it shall recommend to the
29 supreme court the censure, retirement, or removal of the judge. The
30 affirmative vote of ~~four (4)~~ **five (5)** members of the commission on
31 judicial qualifications, including a majority of those who were present
32 at the hearing or hearings when the evidence was produced, is required
33 for a recommendation of discipline, retirement, or removal of a judge.

