



January 28, 2011

SENATE BILL No. 499

DIGEST OF SB 499 (Updated January 26, 2011 12:43 pm - DI 106)

Citations Affected: IC 33-33; noncode.

Synopsis: Lake superior court county division. Provides for the four judges of the Lake superior court county division to be: (1) nominated by the Lake County superior court judicial nominating commission and appointed by the governor; and (2) subject to the question of retention or rejection by the Lake County electorate every six years. (Current law provides that the judges of the Lake superior court county division are elected by the electorate of Lake County every six years.) Repeals provisions concerning elected judges of the county division. Makes conforming amendments.

Effective: June 30, 2011; July 1, 2011.

Landske, Tallian, Randolph

January 13, 2011, read first time and referred to Committee on Judiciary.
January 27, 2011, amended, reported favorably — Do Pass.

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SB 499—LS 7463/DI 69+



January 28, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 499



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 33-33-45-21 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 21. (a) The court is
3 divided into civil (including probate), criminal, county, and juvenile
4 divisions. The work of the court shall be divided among the divisions
5 by the rules of the court.

6 (b) Seven (7) judges comprise the civil division. Four (4) judges
7 comprise the criminal division. Four (4) judges comprise the county
8 division. One (1) judge comprises the juvenile division. However, the
9 court by rule may alter the number of judges assigned to a division
10 ~~other than the county division~~ of the court if the court determines that
11 the change is necessary for the efficient operation of the court.

12 (c) The court by rule may reassign a judge of the court from one (1)
13 division to another if the court determines that the change is necessary
14 for the efficient operation of the court. The court by rule ~~shall~~ **may**
15 establish a rotation schedule providing for the rotation of judges
16 through the various divisions. The rotation schedule may be used if ~~a~~
17 ~~judge the court~~ determines that an emergency exists. However, a

SB 499—LS 7463/DI 69+



1 senior judge of any division ~~or a judge of the county division~~ may not
2 be reassigned or rotated to another division under this subsection.

3 (d) The chief judge of the court may assign a judge in one (1)
4 division of the court to hear a case originating in another division of the
5 court, and may reassign cases from one (1) judge to another, if the chief
6 judge determines that the change is necessary for the efficient operation
7 of the court.

8 **(e) A judge of a division of the court who has not been appointed**
9 **to the court under section 38 of this chapter is not eligible to be**
10 **reassigned, rotated, or transferred to the other divisions of the**
11 **court. However, a judge of a division of the court who has not been**
12 **appointed to the court under section 38 of this chapter may apply**
13 **to fill a vacancy in another division of the court through**
14 **appointment as provided under this chapter.**

15 SECTION 2. IC 33-33-45-25 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JUNE 30, 2011]: Sec. 25. (a) ~~Unless the~~
17 ~~judge is a judge of the county division,~~ At the general election
18 immediately preceding the expiration of a judge's extended term, the
19 question of that judge's retention in office or rejection shall be
20 submitted to the electorate of Lake County under section 42 of this
21 chapter. Thereafter, unless rejected by the electorate, each judge shall
22 serve successive terms as provided in section 41(b) of this chapter.

23 (b) A judge of the county division ~~may serve a successive term if~~
24 ~~elected to serve a successive term under section 43 of this chapter.~~
25 **-serving on June 30, 2011, is subject to the question of the judge's**
26 **retention in office or rejection as provided in subsection (a) at the**
27 **expiration of the judge's term of office under the law in effect on**
28 **June 30, 2011.**

29 SECTION 3. IC 33-33-45-34 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 34. (a) When a vacancy
31 occurs in the superior court of Lake County, ~~not including its county~~
32 ~~division,~~ the clerk of the court shall promptly notify the chairman and
33 each member of the commission of the vacancy. The chairman shall
34 call a meeting of the commission within ten (10) days following the
35 notice. The commission shall submit its nominations of three (3)
36 candidates for each vacancy and certify them to the governor as
37 promptly as possible, and not later than sixty (60) days after the
38 vacancy occurs. When it is known that a vacancy will occur at a
39 definite future date within the term of the governor then serving, but
40 the vacancy has not yet occurred, the clerk shall notify the chairman
41 and each member of the commission immediately of the forthcoming
42 vacancy, and the commission may within fifty (50) days of the notice

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1 of the vacancy make its nominations and submit to the governor the
2 names of three (3) persons nominated for the forthcoming vacancy.

3 (b) Meetings of the commission shall be called by its chairman or,
4 if the chairman fails to call a necessary meeting, upon the call of any
5 five (5) members of the commission. The chairman, whenever the
6 chairman considers a meeting necessary, or upon the request by any
7 five (5) members of the commission for a meeting, shall give each
8 member of the commission at least five (5) days written notice by mail
9 of the date, time, and place of every meeting unless the commission at
10 its previous meeting designated the date, time, and place of its next
11 meeting.

12 (c) Meetings of the commission are to be held at the Lake County
13 government center in Crown Point or another place, as the circuit court
14 clerk of Lake County may arrange, at the direction of the chairman of
15 the commission.

16 (d) The commission may act only at a public meeting. IC 5-14-1.5
17 applies to meetings of the commission. The commission may not meet
18 in executive session under IC 5-14-1.5-6.1 for the consideration of a
19 candidate for judicial appointment.

20 (e) The commission may act only by the concurrence of a majority
21 of its members attending a meeting. Five (5) members constitute a
22 quorum at a meeting.

23 (f) The commission may adopt reasonable and proper rules and
24 regulations for the conduct of its proceedings and the discharge of its
25 duties. These rules must provide for the receipt of public testimony
26 concerning the qualifications of candidates for nomination to the
27 governor.

28 SECTION 4. IC 33-33-45-40 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 40. An appointment by
30 the governor or chief justice, as required by section 38 ~~or 39~~ of this
31 chapter, to the superior court of Lake County takes effect immediately
32 if a vacancy exists at the date of the appointment. The appointment
33 takes effect on the date the vacancy is created if a vacancy does not
34 exist at the date of appointment.

35 SECTION 5. IC 33-33-45-41 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 41. (a) Each judge
37 appointed under section 38 of this chapter serves an initial term, which
38 begins on the effective date of the appointment of the judge and
39 continues through December 31 in the year of the general election that
40 follows the expiration of two (2) years after the effective date of the
41 judge's appointment.

42 (b) Unless rejected by the electorate of Lake County under section

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1 42 of this chapter, a judge of the ~~civil division, criminal division, and~~
2 ~~juvenile division~~ **superior court** shall serve successive six (6) year
3 terms.

4 (c) ~~The term of office of a judge of the county division of the~~
5 ~~superior court is six (6) years. A judge appointed under section 39 of~~
6 ~~this chapter to fill a vacancy in the county division of the Lake superior~~
7 ~~court serves for the unexpired term of the vacating judge and until the~~
8 ~~appointed judge's successor is elected and qualified.~~

9 (d) (c) Each six (6) year term begins on the first day of January
10 following the expiration of the preceding initial term or the preceding
11 six (6) year term, as the case may be, and continues for six (6) years.

12 SECTION 6. IC 33-33-45-42, AS AMENDED BY P.L.58-2005,
13 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2011]: Sec. 42. (a) The question of the retention in office or
15 rejection of each judge of ~~the following divisions of~~ the superior court
16 of Lake County shall be submitted to the electorate of Lake County at
17 the general election immediately preceding expiration of the term of
18 the judge.

19 (1) ~~Civil division.~~

20 (2) ~~Criminal division.~~

21 (3) ~~Juvenile division.~~

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

27 (c) If a majority of the ballots cast by the electors voting on any
28 question is "Yes", the judge whose name appeared on the question shall
29 be approved for a six (6) year term beginning January 1 following the
30 general election as provided in section 41(b) of this chapter.

31 (d) If a majority of the ballots cast by the electors voting on any
32 question is "No", the judge whose name appeared on the question shall
33 be rejected. The office of the rejected judge is vacant on January 1
34 following the rejection. The vacancy shall be filled by appointment by
35 the governor under section 38 of this chapter.

36 (e) The Lake County election board shall submit the question of the
37 retention in office or rejection of a judge described in subsection (a) to
38 the electorate of Lake County. The submission of the question is
39 subject to the provisions of IC 3 that are not inconsistent with this
40 chapter.

41 (f) If a judge who is appointed does not desire to serve any further
42 term, the judge shall notify in writing the clerk of the Lake circuit court

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1 at least sixty (60) days before any general election, in which case the
2 question of that judge's retention in office or rejection shall not be
3 submitted to the electorate, and the office becomes vacant at the
4 expiration of the term.

5 SECTION 7. IC 33-33-45-44 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 44. (a) A judge of the
7 superior court may not during a term of office as judge of the superior
8 court do any of the following:

- 9 (1) Engage in the practice of law.
- 10 (2) Run for elective office. ~~unless the elective office is that of~~
11 ~~judge of the county division of the Lake superior court.~~
- 12 (3) Take part in any political campaign. ~~unless the judge is~~
13 ~~running for election as judge of the county division and the~~
14 ~~political campaign is conducted for that office.~~

15 (b) Failure to comply with this section is sufficient cause for the
16 commission on judicial qualifications to recommend to the supreme
17 court that the judge be censured or removed.

18 (c) A political party may not directly or indirectly campaign for or
19 against a judge subject to retention or rejection under this chapter.

20 SECTION 8. THE FOLLOWING ARE REPEALED [EFFECTIVE
21 JULY 1, 2011]: IC 33-33-45-39; IC 33-33-45-43.

22 SECTION 9. [EFFECTIVE JUNE 30, 2011] (a) **Notwithstanding**
23 **the amendment and repeal by this act of provisions in IC 33-33-45,**
24 **and except as provided in subsection (c), the term of a judge of the**
25 **county division of the Lake superior court who is in office on June**
26 **30, 2011, does not terminate until the date that the term would**
27 **have terminated under the law in effect on June 30, 2011.**

28 (b) **Except as provided in subsection (c), the question of**
29 **retention or rejection of a judge of the county division of the Lake**
30 **superior court described in IC 33-33-45-25, as amended by this act,**
31 **shall be placed on the ballot at the general election immediately**
32 **preceding the date on which the term of the judge occupying the**
33 **position on June 30, 2011, would have terminated under the law in**
34 **effect on June 30, 2011.**

35 (c) A vacancy that occurs on the Lake superior court county
36 division after June 30, 2011, shall be filled as provided in
37 IC 33-33-45-34, as amended by this act. A person appointed to fill
38 a vacancy under this subsection serves an initial term as provided
39 in IC 33-33-45-41, as amended by this act.

40 (d) This SECTION expires January 2, 2017.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 499, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 14, strike "shall" and insert "**may**".

Page 1, line 16, strike "a judge" and insert "**the court**".

and when so amended that said bill do pass.

(Reference is to SB 499 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 3.

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