



Ohio Legislative Service Commission 122nd House Bill Analysis

H.B. 140

122nd General Assembly
(As Introduced)

Reps. Cates, Garcia, Gardner, Krebs, Metzger, Harris, Padgett, Terwilleger, Reid, Jacobson, Hood, Haines, Ford

- Requires that a person who is elected by the members of a caucus of the General Assembly to fill a vacancy in the Senate or House of Representatives must have resided, for at least one year prior to the election by those members, in the district the person will represent.

CONTENT AND OPERATION

Background

Section 3 of Article II of the Ohio Constitution provides that "senators and representatives shall have resided in their respective districts one year next preceding their election. . . ." Section 11 of that Article provides, in relevant part, that

A vacancy in the Senate or in the House of Representatives for any cause . . . shall be filled by election by the members of the Senate or the members of the House of Representatives, as the case may be, who are affiliated with the same political party as the person last elected by the electors to the seat which has become vacant. A vacancy occurring before or during the first twenty months of a Senatorial term shall be filled temporarily by election as provided in this section, for only that portion of the term which will expire on the thirty-first day of December following the next general election occurring in an even-numbered year after the vacancy occurs, at which election the seat shall be filled by the electors as provided by law for the remaining, unexpired portion of the term. . . . No person shall be elected to fill a vacancy in the Senate or House of Representatives, as the case may be, unless he meets the qualifications set forth in the Constitution and the laws of this state for the seat in which the vacancy occurs. . . . An election to fill a vacancy shall be accomplished . . . by the adoption of a resolution, while the Senate or the House of Representatives, as the case may be, is in session, with the taking of the yeas and nays of the members of the Senate or the House of Representatives, as the case may be, affiliated with the same political party as the person last elected to the seat in which the vacancy occurs.

Research by Legislative Service Commission staff indicates that it is not clear whether the requirement of Section 3, that a person shall have resided in the legislative district for one year next preceding his "election," applies only to an election by the electors or also to the "election" referred to in Section 11 in regard to an appointment to fill a vacancy. Although the words of the Constitution read by themselves seem to indicate that the one-year residency requirement does apply to appointees, the 1981 Ohio Supreme Court case *Corrigan v. Dean*, 81-335, may indicate that the requirement does not apply to appointees (see **COMMENT**, below). In another Ohio Supreme Court case, *State, ex rel. Peters v. McCollister* (1841), 11 Ohio 46, the Court explained the distinction between an "election" and an "appointment" to office.

. . . [W]henver the office is to be conferred by the people, or by any considerable body of the people, it is spoken of as *an election*. Whenever it is to be conferred by an individual, as by the governor, or by a select number of individuals, as by a judicial court, or by the general assembly, it is spoken of as *an appointment*. (*McCollister*, p. 52.) (Emphasis in the original.)

. . . [T]he framers of the Constitution unquestionably understood that there was a difference in filling an office by *appointment* and by *election*. (*Ibid.*, p. 53.) (Emphasis in the original.)

Once appointed to fill a vacancy in the General Assembly, a person must reside in the district the person represents. The Revised Code requires that, at all times during the term of office of a member of the General Assembly, the member must reside in the district the member represents (an exception is made for a member of the General Assembly who represents a district where there is a change in boundaries that leaves the member's residence outside the district) (sec. 3.15(A)(1)).

The bill

The bill would require that any person who is elected by members of a caucus of the General Assembly to fill a vacancy in the Senate or House of Representatives under Section 11 of Article II (see "**Background**," above) must have been a resident, for at least one year immediately prior to the election by those members, of the district the person is elected to represent, unless the person has been absent on the public business of the United States or of Ohio. The bill would define "caucus" as all of the members of the House of Representatives or all of the members of the Senate of the General Assembly who are members of the same political party. (Sec. 3.15(B).)

COMMENT

In the *Dean* case, a seat became vacant in January 1981 in the House of Representatives for the 17th District. Jeffrey Dean was elected to fill the vacancy in the office by the members of the House of Representatives who were affiliated with the political party of the legislator who resigned his seat, and Dean took office in February 1981. Dean had not resided in the 17th district for one year prior to his election by the members of his party in the House. The Ohio Supreme Court dismissed the action brought to remove Dean from office with no comment, so it is not possible to discern from this case on what grounds Dean kept his seat.

HISTORY

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