

**Senate Finance Committee
Judge James Walther
Interested Party Testimony on House Bill 96
May 29, 2025**

Chair Cirino, Vice Chair Chavez, Ranking Member Hicks-Hudson and members of the Senate Finance Committee, I thank you for this opportunity to submit interested party testimony for House Bill 96 on behalf of the Ohio Association of Probate Judges.

I am James Walther, Judge of the Lorain County Probate Court. I am currently in my third term, serving since 2009. I am President of the Ohio Association of Probate Judges and Immediate Past President of the National College of Probate Judges. I also serve as a member of the Probate Law and Procedure Committee of the Ohio Judicial Conference, as a member of the Board of Trustees of the Ohio Judicial College and as a member of the Supreme Court's Advisory Committee on Children & Families.

Metroparks Commissioner Appointment

The probate judges oppose proposed changes to R.C. 1545.05(C) as included in H.B. 96. For over 100 years, Ohio's probate courts have provided steady, balanced leadership to Ohio's Metroparks. Probate judges are trained in due process, fairness and avoidance of conflicts. In fact, the Code of Judicial Conduct provides that a probate judge: "shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment."

Proposed R.C. 1545.05(C) would apply to Mahoning County's Mill Creek Metropark system and potentially other Metropark systems. This bill would change the appointing authority of the five park commission members from the probate judge to the County Commissioners. Additionally, three of the five appointed park commission members would be designated, elected officeholders. This attempt to introduce politics into the appointment process is misguided. The Ohio Attorney General has already determined that serving on a board of a park commission is incompatible with serving as a township trustee or on the legislative authority for a village.

The Ohio Attorney General maintains a Compatibility Opinions Index. The Index states:

"Among the questions presented to the Attorney General for resolution by way of formal opinion are those that concern the compatibility of public offices or positions. An issue of compatibility is presented whenever one person wishes to hold simultaneously two or more positions of public service."

The Ohio Attorney General has already opined on the scheme proposed for new R.C. 1545.05(C), finding:

1988 Ohio Op. Atty Gen. 147 at 15: "It is, therefore, my opinion, and you are hereby advised, that the positions of township trustee and commissioner of a county park district created under R.C. Chapter 1545 are incompatible." 1988 Ohio AG LEXIS 33.

1994 Ohio Op. Att. Gen 091 at 7-8: “It is, therefore, my opinion, and you are advised that R.C. 731.12 prohibits a member of the legislative authority of a village from serving simultaneously as a member of the board of park commissioners of a township park district.” 1994 Ohio AG LEXIS 122’

The H.B. 96 proposed changes to R.C. 1545.05 are fatally flawed. Additionally, there may be unintended consequences to changing the park commissioner appointment process for select counties because of local park operational issues. We recommend removing this provision from the budget process for further study and debate.

Eminent Domain

The provisions in H.B. 96 to prevent the usage of eminent domain to improve and expand park trails is short-sighted. Recently, I had an eminent domain action brought in the Lorain County Probate Court by the Lorain County Metroparks. LCMP sought a small parcel of real estate from a defunct, insolvent corporation. The property was necessary for the continuation of a Metropark trail. There was no possibility for LCMP to buy the property from an owner that no longer existed. Without eminent domain, this property would have remained a zombie property in perpetuity.

There are sufficient safeguards in existing Ohio law to prevent overreach or misuse of eminent domain in unnecessary situations. Recent court cases denying the use of eminent domain in the creation of park trails shows that the current process works as intended. Eminent domain ensures that critical links in a trail network can be completed, benefiting the larger public. Park trails provide safe, accessible spaces for walking, running, biking, and outdoor recreation. To take away this important tool would leave trails fragmented, or worse, not built at all. We recommend removing this provision.

Probate Online Dockets

The probate judges do not oppose an online docket requirement, but probate courts are not governed by R.C. 2303.12 and R.C. 2303.201. Probate court computerization and computer legal research fees are laid out in R.C. 2101.162. The clerk of the court of a common pleas, general division court does not maintain our records under R.C. 2303.12. Probate judges are the ex-officio clerks of the probate court under R.C. 2101.01, which codifies requirements of the Ohio Constitution.

OH, Const. Art IV, Sec. 4 (C): “Unless otherwise provided by law, there shall be a probate division and such other divisions of the courts of common pleas as may be provided by law. Judges shall be elected specifically to such probate division and to such other divisions. The judges of the probate division shall be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts.”

OH. Const., Sched., § 14: “The probate courts provided for in this constitution, as to all matters within the jurisdiction conferred upon said courts, shall be the successors, in the several counties, of the present courts of common pleas; and the records, files, and papers, business and proceedings, appertaining to said jurisdiction, shall be transferred to said courts of probate, and be there proceeded in, according to law.”

Therefore, we recommend moving the probate online dockets provisions from Title 23 and placing them in Title 21.

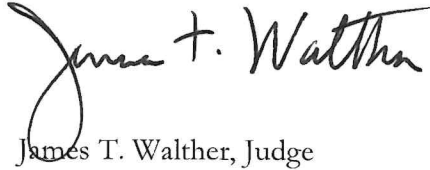
Unfunded Mandate

To help offset the cost of the unfunded online dockets requirement, the Ohio Association of Probate Judges recommends increasing the maximum R.C. 2101.162 probate court computerization fees to \$20.00

and increasing the computer legal research fee to \$6.00. This simple change to H.B. 96 would provide probate courts parity with the common pleas, general division courts while incentivizing those same Probate Courts to provide greatly increased docket transparency and access to attorneys, litigants and the public.

On behalf of the probate judges, we thank you for the opportunity to submit our testimony on H.B. 96. If you should have any questions, please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink that reads "James T. Walther". The signature is written in a cursive style with a large, looping initial "J".

James T. Walther, Judge