



Reprinted  
February 24, 2016

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## ENGROSSED SENATE BILL No. 352

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DIGEST OF SB 352 (Updated February 23, 2016 4:33 pm - DI 92)

**Citations Affected:** IC 3-10; IC 3-11; IC 3-13; IC 33-33.

**Synopsis:** Marion superior court judges. Provides for the selection of Marion superior court (court) judges. Establishes the 14 member Marion County judicial selection committee (committee). Provides that, when the committee learns of a vacancy on the court, the committee follows certain procedures which conclude in the committee sending the names of three nominees to the governor. Requires the governor to appoint one of the nominees as judge to fill the vacancy. Provides that, at the end of a judge's term on the court, the judge may have the question of the judge's retention on the court placed on the general election ballot. Provides that, before a judge may stand for retention, the judge must appear before the committee to allow the committee to issue a recommendation to voters concerning the judge's qualifications and suitability to continue to hold judicial office. Requires the judge's retention on the court to be approved or rejected by the electorate of Marion County.

**Effective:** January 1, 2017.

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**Young R Michael, Waltz, Taylor,  
Merritt, Miller Patricia, Delph,  
Schneider**

(HOUSE SPONSORS — FRIZZELL, DELANEY)

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January 7, 2016, read first time and referred to Committee on Judiciary.  
January 28, 2016, amended, reported favorably — Do Pass.  
February 1, 2016, read second time, ordered engrossed. Engrossed.  
February 3, 2016, read third time, passed. Yeas 35, nays 14.

HOUSE ACTION

February 9, 2016, read first time and referred to Committee on Courts and Criminal Code.  
February 18, 2016, amended, reported — Do Pass.  
February 22, 2016, read second time, ordered engrossed.  
February 23, 2016, engrossed, read third time, recommitted to Committee of One, amended; passed. Yeas 70, nays 30.

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ES 352—LS 6923/DI 106





Reprinted  
February 24, 2016

Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 352

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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 3-10-1-16 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 16. At a primary  
3 election a voter may vote for as many candidates for each office as  
4 there are persons to be elected to that office at the general election.  
5 ~~except as provided in IC 33-33-49-13 for candidates for judge of the~~  
6 ~~Marion superior court.~~

7 SECTION 2. IC 3-11-2-10, AS AMENDED BY P.L.219-2013,  
8 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
9 JANUARY 1, 2017]: Sec. 10. (a) Public questions shall be placed on  
10 the general election ballot in the following order after the statement  
11 described in section 7 of this chapter, and the instructions described in  
12 subsections (d) and (e) and section 8 of this chapter:

- 13 (1) Ratification of a state constitutional amendment.  
14 (2) Local public questions.  
15 **Subject to section 10.1 of this chapter**, each public question shall be  
16 placed in a separate column on the ballot.  
17 (b) The name or title of the political party or independent ticket

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1 described in section 6 of this chapter shall be placed on the general  
 2 election ballot after the public questions described in subsection (a).  
 3 The device of the political party or independent ticket shall be placed  
 4 immediately under the name of the political party or independent ticket.  
 5 The instructions for voting a straight party ticket shall be placed to the  
 6 right of the device.

7 (c) The instructions for voting a straight party ticket must conform  
 8 as nearly as possible to the following: "To vote a straight (insert  
 9 political party name) ticket for all (insert political party name)  
 10 candidates on this ballot, make a voting mark on or in this circle and do  
 11 not make any other marks on this ballot. If you wish to vote for a  
 12 candidate seeking a nonpartisan office or on a public question, you  
 13 must make another voting mark on the appropriate place on this  
 14 ballot."

15 (d) If the ballot contains an independent ticket described in section  
 16 6 of this chapter and at least one (1) other independent candidate, the  
 17 ballot must also contain a statement that reads substantially as follows:  
 18 "A vote cast for an independent ticket will only be counted for the  
 19 candidates for President and Vice President or governor and lieutenant  
 20 governor comprising that independent ticket. This vote will NOT be  
 21 counted for any OTHER independent candidate appearing on the  
 22 ballot."

23 (e) The ballot must also contain a statement that reads substantially  
 24 as follows: "A write-in vote will NOT be counted unless the vote is for  
 25 a DECLARED write-in candidate. To vote for a write-in candidate, you  
 26 must make a voting mark on or in the square to the left of the name you  
 27 have written in or your vote will not be counted."

28 (f) **Subject to section 10.1 of this chapter**, the list of candidates of  
 29 the political party shall be placed immediately under the instructions  
 30 for voting a straight party ticket. The names of the candidates shall be  
 31 placed three-fourths (3/4) of an inch apart from center to center of the  
 32 name. The name of each candidate must have, immediately on its left,  
 33 a square three-eighths (3/8) of an inch on each side.

34 (g) The circuit court clerk may authorize the printing of ballots  
 35 containing a ballot variation code to ensure that the proper version of  
 36 a ballot is used within a precinct.

37 SECTION 3. IC 3-11-2-10.1 IS ADDED TO THE INDIANA CODE  
 38 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE  
 39 JANUARY 1, 2017]: **Sec. 10.1. (a) This section applies only to a  
 40 public question concerning the retention in office of a judge of the  
 41 Marion superior court under IC 33-33-49.**

42 (b) **The question of the retention of the judge at the general**



1 election shall be placed on the ballot at the same row or column  
 2 level of the ballot where the question of other judges is placed on  
 3 the ballot but in a column or row where independent candidates  
 4 are placed on the ballot.

5 (c) If the question of the retention of more than one (1) judge is  
 6 placed on a ballot, the judges shall be placed on the ballot in  
 7 alphabetical order according to surname.

8 SECTION 4. IC 3-13-6-1, AS AMENDED BY P.L.194-2013,  
 9 SECTION 91, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10 JANUARY 1, 2017]: Sec. 1. (a) As used in this section, "judge" refers  
 11 to a judge of a circuit, superior, or probate court.

12 (b) If a judge wants to resign from office, the judge must resign as  
 13 provided in IC 5-8-3.5.

14 (c) A vacancy that occurs because of the death of a judge may be  
 15 certified to the governor under IC 5-8-6.

16 (d) A vacancy that occurs, other than by resignation or death of a  
 17 judge, shall be certified to the governor by the circuit court clerk of the  
 18 county in which the judge resided.

19 (e) A vacancy in the office of judge of a circuit court shall be filled  
 20 by the governor as provided by Article 5, Section 18 of the Constitution  
 21 of the State of Indiana. However, the governor may not fill a vacancy  
 22 that occurs because of the death of a judge until the governor receives  
 23 notice of the death under IC 5-8-6.

24 (f) The person who is appointed holds the office until:

25 (1) the end of the unexpired term; or

26 (2) a successor is elected at the next general election for the  
 27 office, and qualified;

28 whichever occurs first.

29 (g) Except as provided in this subsection, the office of judge of the  
 30 circuit court shall be elected at the next general election following the  
 31 date any vacancy occurred. If a vacancy occurs in the office of judge of  
 32 the circuit court after noon seventy-four (74) days before a general  
 33 election, the office shall be elected at the second general election  
 34 following the date any vacancy occurred.

35 (h) The person elected at the general election following an  
 36 appointment to fill the vacancy, upon being qualified, holds office for  
 37 the six (6) year term prescribed by Article 7, Section 7 of the  
 38 Constitution of the State of Indiana and until a successor is elected and  
 39 qualified.

40 (i) A vacancy in the office of judge of a superior or probate court  
 41 shall be filled by the governor subject to the following:

42 (1) IC 33-33-2-39.



- 1 (2) IC 33-33-2-43.  
 2 (3) IC 33-33-45-38.  
 3 (4) IC 33-33-71-40.  
 4 (5) **IC 33-33-49-13.3.**

5 However, the governor may not fill a vacancy that occurs because of  
 6 the death of a judge until the governor receives notice of the death  
 7 under IC 5-8-6. The person who is appointed holds office for the  
 8 remainder of the unexpired term.

9 SECTION 5. IC 33-33-49-6, AS AMENDED BY P.L.80-2006,  
 10 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 JANUARY 1, 2017]: Sec. 6. (a) There is established a superior court  
 12 in Marion County. The court consists of:

13 (1) thirty-five (35) judges beginning January 1, 2007, and ending  
 14 December 31, 2008; and

15 (2) thirty-six (36) judges beginning January 1, 2009.

16 (b) To be qualified to serve as a judge of the court, a person must  
 17 be, at the time a ~~declaration of candidacy or a petition of nomination~~  
 18 ~~under IC 3-8-6 is filed~~ **the person applies to fill a vacancy or files for**  
 19 **retention:**

20 (1) a resident of Marion County; and

21 (2) an attorney who has been admitted to the bar of Indiana for at  
 22 least five (5) years.

23 (c) During the term of office, a judge of the court must remain a  
 24 resident of Marion County.

25 SECTION 6. IC 33-33-49-13 IS REPEALED [EFFECTIVE  
 26 JANUARY 1, 2017]. Sec. ~~13~~: (a) Each judge of the court shall be  
 27 elected for a term of six (6) years that begins January 1 after the year  
 28 of the judge's election and continues through December 31 in the sixth  
 29 year. The judge shall hold office for the six (6) year term or until the  
 30 judge's successor is elected and qualified. A candidate for judge shall  
 31 run at large for the office of judge of the court and not as a candidate  
 32 for judge of a particular room or division of the court.

33 (b) At the primary election held in 2008 and every six (6) years  
 34 thereafter, a political party may nominate not more than eight (8)  
 35 candidates for judge of the court. At the primary election held in 2006  
 36 and every six (6) years thereafter, a political party may nominate not  
 37 more than ten (10) candidates for judge of the court. The candidates  
 38 shall be voted on at the general election. Other candidates may qualify  
 39 under IC 3-8-6 to be voted on at the general election.

40 (c) The names of the party candidates nominated and properly  
 41 certified to the Marion County election board, along with the names of  
 42 other candidates who have qualified, shall be placed on the ballot at the



1 general election in the form prescribed by IC 3-11. At the 2008 general  
 2 election and every six (6) years thereafter, persons eligible to vote at  
 3 the general election may vote for sixteen (16) candidates for judge of  
 4 the court. Beginning with the 2006 general election and every six (6)  
 5 years thereafter, persons eligible to vote at the general election may  
 6 vote for twenty (20) candidates for judge of the court.

7 (d) The candidates for judge of the court receiving the highest  
 8 number of votes shall be elected to the vacancies. The names of the  
 9 candidates elected as judges of the court shall be certified to the county  
 10 election board as provided by law.

11 SECTION 7. IC 33-33-49-13.1 IS ADDED TO THE INDIANA  
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 13 [EFFECTIVE JANUARY 1, 2017]: **Sec. 13.1. (a) As used in this**  
 14 **chapter, "committee" refers to the Marion County judicial**  
 15 **selection committee established by subsection (b).**

16 (b) The Marion County judicial selection committee is  
 17 established to select nominees for the court.

18 (c) The committee consists of the following fourteen (14)  
 19 members:

20 (1) Four (4) attorneys who reside in Marion County,  
 21 appointed as follows:

22 (A) One (1) attorney appointed by the speaker of the house  
 23 of representatives.

24 (B) One (1) attorney appointed by the minority leader of  
 25 the house of representatives.

26 (C) One (1) attorney appointed by the president pro  
 27 tempore of the senate.

28 (D) One (1) attorney appointed by the minority leader of  
 29 the senate.

30 A person appointed under this subdivision may not be a  
 31 member of the general assembly.

32 (2) The president of the Indianapolis bar association or the  
 33 president's designee. If the president does not reside in  
 34 Marion County, the president must appoint a designee who  
 35 resides in Marion County.

36 (3) The president of the Marion County bar association or the  
 37 president's designee. If the president does not reside in  
 38 Marion County, the president must appoint a designee who  
 39 resides in Marion County.

40 (4) The president of the Indiana Trial Lawyers Association or  
 41 the president's designee. If the president does not reside in  
 42 Marion County, the president must appoint a designee who



- 1 resides in Marion County.
- 2 (5) The president of the Defense Trial Counsel of Indiana or  
3 the president's designee. If the president does not reside in  
4 Marion County, the president must appoint a designee who  
5 resides in Marion County.
- 6 (6) Two (2) members appointed by the chairperson of each  
7 major political party (as defined by IC 3-5-2-30(2)) in Marion  
8 County. Each of the four (4) members appointed under this  
9 subdivision must reside in Marion County.
- 10 (7) The chief judge of the Indiana court of appeals or a  
11 designee of the chief judge who is a judge of the Indiana court  
12 of appeals. The chief judge or chief judge's designee serves as  
13 the vice-chairperson of the committee.
- 14 (8) The chief justice of Indiana or a designee of the chief  
15 justice who is a justice of the Indiana supreme court. The  
16 chief justice or chief justice's designee serves as the  
17 chairperson of the committee.
- 18 (d) Each member described in subsection (c)(1) through (c)(5)  
19 must be a member of the Indianapolis Bar Association or the  
20 Marion County Bar Association.
- 21 (e) If a member of the committee is employed by a law firm, no  
22 other person employed by the same law firm may be appointed to  
23 the committee.
- 24 (f) Each member of the committee who is not an ex officio  
25 member serves a four (4) year term, beginning on January 1, 2017,  
26 and ending on December 31, 2020. A member of the committee  
27 may be reappointed for one (1) or more additional four (4) year  
28 terms. If a member is appointed to fill a vacancy, the member  
29 serves during the unexpired term of his or her predecessor and  
30 may be reappointed for one (1) or more additional four (4) year  
31 terms. For purposes of this section, the designee of a person  
32 described in subsection (c)(2) through (c)(5) is not an ex officio  
33 member.
- 34 (g) If a vacancy exists on the committee, the appointing  
35 authority who appointed the former member whose position has  
36 become vacant shall appoint an individual to fill the vacancy.
- 37 (h) An ex officio member of the committee ceases to be a  
38 member of the committee at the time the person no longer holds  
39 the office that entitles the person to be a member of the committee.  
40 For purposes of this section, the designee of a person described in  
41 subsection (c)(2) through (c)(5) is not an ex officio member.
- 42 (i) A member of the committee described in subsection (c)(1)





1 through (c)(6) who no longer resides in Marion County is  
 2 considered to have resigned from the committee. A member of the  
 3 committee who no longer resides in Marion County shall notify the  
 4 chairperson in writing.

5 (j) Each member of the committee is entitled to receive the same  
 6 per diem, mileage, and travel allowances paid to individuals who  
 7 serve as legislative members of interim study committees  
 8 established by the legislative council.

9 (k) A quorum consists of nine (9) members of the committee.

10 (l) The affirmative votes of nine (9) members of the committee  
 11 are required for the committee to take official action with respect  
 12 to any candidate for judicial office.

13 (m) The committee shall appoint and nominate judicial  
 14 candidates for the Marion superior court in accordance with  
 15 section 13.3 of this chapter.

16 (n) The committee meets upon call of the chairperson.

17 (o) The committee shall meet in the statehouse, or in any other  
 18 appropriate location in Marion County, as determined by the  
 19 chairperson.

20 (p) Except as otherwise provided in subsection (q), or otherwise  
 21 provided in this chapter, the committee may adopt its own policies  
 22 and operating procedures. The rules must comply with this chapter  
 23 and include procedures by which eligible candidates for a vacancy  
 24 in the Marion superior court may submit their names to the  
 25 committee. The rules are public records, and the meetings of the  
 26 committee at which the rules are considered for initial adoption or  
 27 amendment must be publicly announced and open to the public.

28 (q) Notwithstanding IC 5-14-1.5-2, the committee is a public  
 29 agency for the purposes of IC 5-14-1.5. The committee may meet  
 30 in executive session under IC 5-14-1.5-6.1 for the consideration of  
 31 a candidate for appointment to or retention on the Marion  
 32 superior court if:

33 (1) notice of the executive session is given in the manner  
 34 prescribed by IC 5-14-1.5-5;

35 (2) all interviews of candidates are conducted at meetings  
 36 open to the public; and

37 (3) copies of all attributable communications (as defined in  
 38 subsection (r)) concerning the candidates have been provided  
 39 to all committee members and made available for public  
 40 inspection and copying.

41 (r) As used in this subsection, "attributable communication"  
 42 refers to a communication containing the sender's name, address,



1 and telephone number. The committee shall provide a copy of all  
 2 attributable communications concerning a candidate for  
 3 appointment to or retention on the Marion superior court to each  
 4 member of the committee. An attributable communication becomes  
 5 available for public inspection and copying under IC 5-14-3-3 after  
 6 a copy is provided to each member of the committee. The  
 7 committee may not consider a communication other than an  
 8 attributable communication in evaluating a candidate for  
 9 appointment to or retention on the Marion superior court.

10 (s) A former member of the committee may not be appointed or  
 11 nominated as a judge of the Marion superior court if the person  
 12 has served as a member of the committee within the previous two  
 13 (2) years.

14 SECTION 8. IC 33-33-49-13.2 IS ADDED TO THE INDIANA  
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 16 [EFFECTIVE JANUARY 1, 2017]: Sec. 13.2. (a) Except for the  
 17 transitional period described in subsection (h), each judge of the  
 18 court shall serve a term of six (6) years. The judge shall hold office  
 19 for the six (6) year term or until the judge's successor is appointed  
 20 and qualified. A judge shall be appointed at large for the office of  
 21 judge of the court and not as the judge of a particular room or  
 22 division of the court.

23 (b) The thirty-six (36) judges of the court shall be divided into  
 24 three (3) retention classes. Each retention class consists of twelve  
 25 (12) judges.

26 (c) Retention class A consists of twelve (12) of the twenty (20)  
 27 judges:

28 (1) whose terms expire on December 31, 2018; and

29 (2) who have the most seniority as judges.

30 If two (2) or more judges have equal seniority such that the  
 31 assignment of only twelve (12) judges to retention class A cannot  
 32 be done, those judges having the highest bar number (not including  
 33 the county identifier) have the highest seniority.

34 (d) Retention class B consists of:

35 (1) four (4) of the sixteen (16) judges having the most seniority  
 36 as judges whose terms expire on December 31, 2020; and

37 (2) the eight (8) judges not assigned to retention class A whose  
 38 terms would have expired on December 31, 2018.

39 If two (2) or more judges have equal seniority such that the  
 40 assignment of only four (4) judges described in subdivision (1) to  
 41 retention class B cannot be done, those judges having the highest  
 42 bar number (not including the county identifier) have the highest



- 1 seniority.
- 2 (e) Retention class C consists of the twelve (12) judges:
- 3 (1) whose terms would have otherwise expired on December
- 4 31, 2020; and
- 5 (2) who are not assigned to retention class B.
- 6 (f) The term of a judge assigned to:
- 7 (1) retention class A begins on January 1, 2019, and every six
- 8 (6) years thereafter, and continues through December 31,
- 9 2025, and every six (6) years thereafter;
- 10 (2) retention class B begins on January 1, 2021, and every six
- 11 (6) years thereafter, and continues through December 31,
- 12 2027, and every six (6) years thereafter; and
- 13 (3) retention class C begins on January 1, 2023, and every six
- 14 (6) years thereafter, and continues through December 31,
- 15 2029, and every six (6) years thereafter.
- 16 (g) A newly appointed judge is assigned the retention class of the
- 17 judge's predecessor.
- 18 (h) Notwithstanding any other law, the term of a judge
- 19 described in:
- 20 (1) subsection (d)(2) expires on December 31, 2020; and
- 21 (2) subsection (e) expires on December 31, 2022.
- 22 **This subsection expires on January 1, 2023.**
- 23 SECTION 9. IC 33-33-49-13.3 IS ADDED TO THE INDIANA
- 24 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 25 [EFFECTIVE JANUARY 1, 2017]: **Sec. 13.3. (a) A sitting judge of**
- 26 **the court shall be approved or rejected by the electorate of Marion**
- 27 **County in accordance with this section.**
- 28 (b) A judge who wishes to be retained in office shall file a
- 29 statement with the clerk during the period described in IC 3-8-2-4
- 30 during which a declaration of candidacy must be filed in the year
- 31 in which the judge's term expires. The judge's statement must
- 32 include the following information:
- 33 (1) A statement indicating that the judge wishes to have the
- 34 question of the judge's retention placed on the ballot.
- 35 (2) A statement of the judge's name as:
- 36 (A) the judge wants the judge's name to appear on the
- 37 ballot; and
- 38 (B) a candidate's name is permitted to appear on the ballot
- 39 under IC 3-5-7.
- 40 (3) If the judge is affiliated with a political party, the name of
- 41 that political party. The judge may indicate in the statement
- 42 that the judge is not affiliated with a political party. For



1 purposes of this subdivision, a judge's affiliation with a  
2 political party is determined as provided in IC 3-8-2-7(a)(4).

3 (4) A statement that the judge requests the name on the  
4 judge's voter registration record be the same as the name the  
5 judge uses on the statement. If there is a difference between  
6 the name on the judge's statement and the name on the  
7 judge's voter registration record, the clerk shall change the  
8 name on the judge's voter registration record to be the same  
9 as the name on the judge's statement.

10 If a judge does not file a statement under this subsection, the clerk  
11 shall, not later than March 1, notify the Marion County judicial  
12 selection committee in writing that the judge does not wish to  
13 continue in office after the end of the judge's term of office.

14 (c) This subsection applies to a judge:

- 15 (1) who does not file a statement under subsection (b); and  
16 (2) whose term expires during the year in which the question  
17 of the retention of the judge would have been placed on the  
18 general election ballot.

19 The term of a judge expires December 31 of the year in which the  
20 question of the judge's retention would have been placed on the  
21 ballot.

22 (d) If the question of a judge's retention is required to be on the  
23 ballot at a general election, the question of approval or rejection of  
24 the judge shall be placed on the general election ballot in the form  
25 prescribed by IC 3-11-2 and must state:

26 "Shall Judge (insert here the name of the judge as stated  
27 under subsection (b)(2)) be retained in office?"

28 If a majority of the ballots cast by the electors voting on the  
29 question is "Yes", the judge whose name appeared on the question  
30 shall be approved for a six (6) year term beginning January 1  
31 following the general election as provided in section 13.2 of this  
32 chapter. If a majority of the ballots cast by the electors voting on  
33 the question is not "Yes", the following apply:

34 (1) The judge whose name appeared on the question is  
35 rejected.

36 (2) The office of the rejected judge becomes vacant on  
37 January 1 following the rejection.

38 (3) The vacancy shall be filled in accordance with this chapter.

39 SECTION 10. IC 33-33-49-13.4 IS ADDED TO THE INDIANA  
40 CODE AS A NEW SECTION TO READ AS FOLLOWS  
41 [EFFECTIVE JANUARY 1, 2017]: Sec. 13.4. (a) When the  
42 committee learns that a vacancy exists or will exist in the court, the



1 committee shall nominate three (3) candidates to the governor to  
2 fill the vacancy in accordance with this section.

3 (b) In making a nomination under this section or a  
4 recommendation concerning retention under section 13.7 of this  
5 chapter, the committee shall consider the following factors with  
6 respect to a candidate:

7 (1) Law school record, including any academic honors and  
8 achievements.

9 (2) Contribution to scholarly journals and publications,  
10 legislative drafting, and legal briefs.

11 (3) Activities in public service, including:

12 (A) writings and speeches concerning public or civic affairs  
13 which are on public record, including but not limited to  
14 campaign speeches or writing, letters to newspapers, and  
15 testimony before public agencies;

16 (B) efforts and achievements in improving the  
17 administration of justice; and

18 (C) other conduct relating to the individual's profession.

19 (4) Whether the candidate reflects the diversity and makeup  
20 of Marion County.

21 (5) Legal experience, including the number of years of  
22 practicing law, the kind of practice involved, and reputation  
23 as a trial lawyer or judge.

24 (6) Probable judicial temperament.

25 (7) Physical condition, including age, stamina, and possible  
26 substance abuse issues.

27 (8) Personality traits, including the exercise of sound  
28 judgment, ability to compromise and conciliate patience,  
29 decisiveness, and dedication.

30 (9) Membership on boards of directors, financial interest, and  
31 any other consideration that might create conflict of interest  
32 with a judicial office.

33 (10) Any other pertinent information that the committee feels  
34 is important in selecting the best qualified individuals for  
35 judicial office.

36 (c) As soon as practicable after the committee learns of a  
37 vacancy, the committee shall publicly announce that it is accepting  
38 applications from persons wishing to fill the vacancy. The  
39 committee shall determine the form and content of the application,  
40 establish a timetable for nominations, and schedule one (1) or more  
41 hearings to interview qualified applicants and select nominees to  
42 fill the vacancy. To the extent practicable, the committee shall



1 endeavor to interview as many qualified applicants as possible.  
 2 However, if a large number of applicants have applied to fill a  
 3 vacancy, the committee may limit itself to interviewing only the  
 4 most qualified applicants. The committee may conduct multiple  
 5 interviews. At the conclusion of the interview process, the  
 6 committee shall nominate the three (3) most qualified candidates  
 7 and forward their names to the governor, who shall appoint one (1)  
 8 of the nominees as judge.

9 (d) If the governor does not appoint a nominee within thirty (30)  
 10 days from the date the governor receives the names of the  
 11 nominees from the committee, the committee shall appoint one (1)  
 12 of the nominees to serve as judge.

13 (e) In no event may more than fifty-two percent (52%) of the  
 14 judges serving on the Marion superior court be members of the  
 15 same political party.

16 SECTION 11. IC 33-33-49-13.7 IS ADDED TO THE INDIANA  
 17 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 18 [EFFECTIVE JANUARY 1, 2017]: **Sec. 13.7. (a) This section applies**  
 19 **to each sitting judge who will stand for retention under section 13.3**  
 20 **of this chapter, including a person who served as a judge of the**  
 21 **Marion superior court on December 31, 2016.**

22 (b) The following definitions apply throughout this section:

23 (1) "News media" includes:

- 24 (A) a newspaper of general circulation in Marion County;
- 25 (B) one (1) or more broadcasters serving Marion County;
- 26 (C) any person who uses a blog or similar Internet web site  
 27 to provide information or commentary concerning the  
 28 judiciary or political matters of interest to residents of  
 29 Marion County; and
- 30 (D) any other appropriate source of news or information  
 31 for Marion County residents.

32 (2) "Recommendation concerning retention" means a  
 33 recommendation from the committee that a judge:

- 34 (A) should be retained in office; or
- 35 (B) should not be retained in office;

36 based on the qualifications and performance of the judge.

37 (3) "Voter outreach organization" includes any organization  
 38 that has the goal of informing voters in Marion County about  
 39 issues and candidates in upcoming elections.

40 (c) Before a judge may stand for retention under section 13.3 of  
 41 this chapter, the judge must appear before the committee to permit  
 42 the committee to issue a recommendation to the voters concerning



1 the judge's qualifications and suitability to continue to hold judicial  
2 office.

3 (d) At the time a judge files a statement under section 13.3 of  
4 this chapter that the judge wishes to be retained in office, the judge  
5 shall:

6 (1) notify the committee that the judge wishes to be retained  
7 in office; and

8 (2) provide the committee with a written statement describing  
9 the judge's qualifications, with particular emphasis on the  
10 matters described in section 13.4(b) of this chapter.

11 (e) After receiving the materials described in subsection (d), the  
12 committee shall promptly schedule a hearing to consider the  
13 materials submitted by the judge and interview the judge. Each  
14 judge is entitled to a hearing before the committee. The hearings  
15 shall be held in executive session.

16 (f) A judge is presumed qualified. The affirmative votes of at  
17 least nine (9) committee members are required to find that a judge  
18 is not qualified.

19 (g) If the committee finds that a judge is not qualified, the  
20 committee shall do the following:

21 (1) Through the chairperson, place on the web sites of the  
22 Indiana supreme court and the Indiana court of appeals, the  
23 following statement: "After considering the qualifications of  
24 Judge (insert name here) and Judge (insert name here)'s  
25 performance in office, the Marion County Judicial Selection  
26 Committee finds that Judge (insert name here) IS NOT  
27 qualified and SHOULD NOT BE retained in office."

28 (2) Issue the following statements to news media and voter  
29 outreach organizations: "After considering the qualifications  
30 of Judge (insert name here) and Judge (insert name here)'s  
31 performance in office, the Marion County Judicial Selection  
32 Committee finds that Judge (insert name here) IS NOT  
33 qualified and SHOULD NOT BE retained in office."

34 (3) Take any other steps reasonably calculated to inform the  
35 general public in Marion County of the committee's  
36 determination.

37 (h) If the committee does not find that a judge is unqualified, the  
38 committee shall do the following:

39 (1) Through the chairperson, place on the web sites of the  
40 Indiana supreme court and the Indiana court of appeals, the  
41 following statement: "After considering the qualifications of  
42 Judge (insert name here) and Judge (insert name here)'s



1 performance in office, the Marion County Judicial Selection  
2 Committee finds that Judge (insert name here) IS qualified  
3 and SHOULD BE retained in office."  
4 (2) Issue the following statements to news media and voter  
5 outreach organizations: "After considering the qualifications  
6 of Judge (insert name here) and Judge (insert name here)'s  
7 performance in office, the Marion County Judicial Selection  
8 Committee finds that Judge (insert name here) IS qualified  
9 and SHOULD BE retained in office."  
10 (3) Take any other steps reasonably calculated to inform the  
11 general public in Marion County of the committee's  
12 determination.  
13 (i) Subject to section 13.1 of this chapter, the committee may  
14 adopt policies and operating procedures to implement this  
15 section.





COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 352, 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 4, between lines 18 and 19, begin a new paragraph and insert:

"SECTION 4. IC 3-10-1-19, AS AMENDED BY P.L.77-2014, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 19. (a) The ballot for a primary election shall be printed in substantially the following form **described in this section** for all the offices for which candidates have qualified under IC 3-8.

**(b) The following shall be printed as the heading for the ballot for a political party:**

"OFFICIAL PRIMARY BALLOT

\_\_\_\_\_ Party **(insert the name of the political party)"**.

**(c) The following shall be printed immediately below the heading required by subsection (b):**

**(1)** For paper ballots, print: To vote for a person, make a voting mark (X or ✓) on or in the box before the person's name in the proper column.

**(2)** For optical scan ballots, print: To vote for a person, darken or shade in the circle, oval, or square (or draw a line to connect the arrow) that precedes the person's name in the proper column.

**(3)** For optical scan ballots that do not contain a candidate's name, print: To vote for a person, darken or shade in the oval that precedes the number assigned to the person's name in the proper column.

**(4)** For electronic voting systems, print: To vote for a person, touch the screen (or press the button) in the location indicated.

**Vote for one (1) only**

**Representative in Congress**

(1) AB \_\_\_\_\_

(2) CD \_\_\_\_\_

(3) EF \_\_\_\_\_

(4) GH \_\_\_\_\_

**(b) Subject to section 19.1 of this chapter,** local public questions shall be placed on the primary election ballot after the voting instructions described in subsection (a) and before the offices described in subsection (e).

**(c)** The local public questions described in subsection (b) shall be



placed:

- (1) in a separate column on the ballot if voting is by paper ballot;
- (2) after the voting instructions described in subsection (a) and before the offices described in subsection (e), in the form specified in IC 3-11-13-11 if voting is by ballot card; or
- (3) as provided by either of the following if voting is by an electronic voting system:

- (A) On a separate screen for a public question.
- (B) After the voting instructions described in subsection (a) and before the offices described in subsection (e), in the form specified in IC 3-11-14-3.5.

(d) A public question shall be placed on the primary election ballot in the following form:

(The explanatory text for the public question,  
if required by law.)

"Shall (insert public question)?"

YES

NO

(e) The offices with candidates for nomination shall be placed on the primary election ballot in the following order:

- (1) Federal and state offices:
  - (A) President of the United States.
  - (B) United States Senator.
  - (C) Governor.
  - (D) United States Representative.
- (2) Legislative offices:
  - (A) State senator.
  - (B) State representative.
- (3) Circuit offices and county judicial offices:
  - (A) Judge of the circuit court, and unless otherwise specified under IC 33, with each division separate if there is more than one (1) judge of the circuit court.
  - (B) Judge of the superior court, and unless otherwise specified under IC 33, with each division separate if there is more than one (1) judge of the superior court.
  - (C) Judge of the probate court.
  - (D) Prosecuting attorney.
  - (E) Circuit court clerk.
- (4) County offices:
  - (A) County auditor.
  - (B) County recorder.
  - (C) County treasurer.



- (D) County sheriff.
- (E) County coroner.
- (F) County surveyor.
- (G) County assessor.
- (H) County commissioner. This clause applies only to a county that is not subject to IC 36-2-2.5.
- (I) Single county executive. This clause applies only to a county that is subject to IC 36-2-2.5.
- (J) County council member.
- (5) Township offices:
  - (A) Township assessor (only in a township referred to in IC 36-6-5-1(d)).
  - (B) Township trustee.
  - (C) Township board member.
  - (D) Judge of the small claims court.
  - (E) Constable of the small claims court.
- (6) City offices:
  - (A) Mayor.
  - (B) Clerk or clerk-treasurer.
  - (C) Judge of the city court.
  - (D) City-county council member or common council member.
- (7) Town offices:
  - (A) Clerk-treasurer.
  - (B) Judge of the town court.
  - (C) Town council member.
- (f) The political party offices with candidates for election shall be placed on the primary election ballot in the following order after the offices described in subsection (e):
  - (1) Precinct committeeman.
  - (2) State convention delegate.
- (g) The local offices to be elected at the primary election shall be placed on the primary election ballot after the offices described in subsection (f).
- (h) The offices described in subsection (g) shall be placed:
  - (1) in a separate column on the ballot if voting is by paper ballot;
  - (2) after the offices described in subsection (f) in the form specified in IC 3-11-13-11 if voting is by ballot card; or
  - (3) either:
    - (A) on a separate screen for each office or public question; or
    - (B) after the offices described in subsection (f) in the form specified in IC 3-11-14-3.5;
 if voting is by an electronic voting system.



SECTION 5. IC 3-10-1-19.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2017]: **Sec. 19.1. (a) This section applies only to a public question concerning the retention in office of a judge of the Marion County Superior Court under IC 33-33-49 who:**

- (1) files a statement under IC 33-33-49-13.2(b); and**
- (2) in the statement claims affiliation with a political party required to hold a primary election under this chapter.**

**(b) The question of the retention of the judge at a primary election under IC 33-33-49 shall be placed only on the ballot of the political party with which the judge claims affiliation as provided in section 19 of this chapter.**

SECTION 6. IC 3-11-2-10, AS AMENDED BY P.L.219-2013, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2017]: **Sec. 10. (a) Public questions shall be placed on the general election ballot in the following order after the statement described in section 7 of this chapter, and the instructions described in subsections (d) and (e) and section 8 of this chapter:**

- (1) Ratification of a state constitutional amendment.**
- (2) Local public questions.**

**Subject to section 10.1 of this chapter**, each public question shall be placed in a separate column on the ballot.

**(b) The name or title of the political party or independent ticket described in section 6 of this chapter shall be placed on the general election ballot after the public questions described in subsection (a). The device of the political party or independent ticket shall be placed immediately under the name of the political party or independent ticket. The instructions for voting a straight party ticket shall be placed to the right of the device.**

**(c) The instructions for voting a straight party ticket must conform as nearly as possible to the following: "To vote a straight (insert political party name) ticket for all (insert political party name) candidates on this ballot, make a voting mark on or in this circle and do not make any other marks on this ballot. If you wish to vote for a candidate seeking a nonpartisan office or on a public question, you must make another voting mark on the appropriate place on this ballot."**

**(d) If the ballot contains an independent ticket described in section 6 of this chapter and at least one (1) other independent candidate, the ballot must also contain a statement that reads substantially as follows: "A vote cast for an independent ticket will only be counted for the candidates for President and Vice President or governor and lieutenant**



governor comprising that independent ticket. This vote will NOT be counted for any OTHER independent candidate appearing on the ballot."

(e) The ballot must also contain a statement that reads substantially as follows: "A write-in vote will NOT be counted unless the vote is for a DECLARED write-in candidate. To vote for a write-in candidate, you must make a voting mark on or in the square to the left of the name you have written in or your vote will not be counted."

(f) **Subject to section 10.1 of this chapter**, the list of candidates of the political party shall be placed immediately under the instructions for voting a straight party ticket. The names of the candidates shall be placed three-fourths (3/4) of an inch apart from center to center of the name. The name of each candidate must have, immediately on its left, a square three-eighths (3/8) of an inch on each side.

(g) The circuit court clerk may authorize the printing of ballots containing a ballot variation code to ensure that the proper version of a ballot is used within a precinct.

SECTION 7. IC 3-11-2-10.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JANUARY 1, 2017]: **Sec. 10.1. (a) This section applies only to a public question concerning the retention in office of a judge of the Marion County Superior Court under IC 33-33-49 who satisfies either of the following:**

**(1) The judge's retention has been approved in a primary election as provided in IC 33-33-49-13.2.**

**(2) The question of the judge's retention is required to be placed on the general election ballot under IC 33-33-49-13.2(d).**

**(b) The question of the retention of the judge at the general election shall be placed on the ballot:**

**(1) immediately under the instructions for voting a straight party ticket; and**

**(2) above the candidates of the political party with which the judge has claimed affiliation.**

**(c) If a judge does not claim affiliation with a political party, the question of the judge's retention shall be placed on the ballot at the same row or column level of the ballot where the question of other judges is placed on the ballot but in a column or row where independent candidates are placed on the ballot.**

SECTION 8. IC 3-13-6-1, AS AMENDED BY P.L.194-2013, SECTION 91, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2017]: **Sec. 1. (a) As used in this section, "judge" refers**



to a judge of a circuit, superior, or probate court.

(b) If a judge wants to resign from office, the judge must resign as provided in IC 5-8-3.5.

(c) A vacancy that occurs because of the death of a judge may be certified to the governor under IC 5-8-6.

(d) A vacancy that occurs, other than by resignation or death of a judge, shall be certified to the governor by the circuit court clerk of the county in which the judge resided.

(e) A vacancy in the office of judge of a circuit court shall be filled by the governor as provided by Article 5, Section 18 of the Constitution of the State of Indiana. However, the governor may not fill a vacancy that occurs because of the death of a judge until the governor receives notice of the death under IC 5-8-6.

(f) The person who is appointed holds the office until:

(1) the end of the unexpired term; or

(2) a successor is elected at the next general election for the office, and qualified;

whichever occurs first.

(g) Except as provided in this subsection, the office of judge of the circuit court shall be elected at the next general election following the date any vacancy occurred. If a vacancy occurs in the office of judge of the circuit court after noon seventy-four (74) days before a general election, the office shall be elected at the second general election following the date any vacancy occurred.

(h) The person elected at the general election following an appointment to fill the vacancy, upon being qualified, holds office for the six (6) year term prescribed by Article 7, Section 7 of the Constitution of the State of Indiana and until a successor is elected and qualified.

(i) A vacancy in the office of judge of a superior or probate court shall be filled by the governor subject to the following:

(1) IC 33-33-2-39.

(2) IC 33-33-2-43.

(3) IC 33-33-45-38.

(4) IC 33-33-71-40.

**(5) IC 33-33-49-13.3.**

However, the governor may not fill a vacancy that occurs because of the death of a judge until the governor receives notice of the death under IC 5-8-6. The person who is appointed holds office for the remainder of the unexpired term."

Page 5, line 33, delete "sixteen (16)" and insert "**twenty (20)**".

Page 5, line 42, delete "eight (8)" and insert "**four (4)**".



Page 5, line 42, delete "twenty (20)" and insert "**sixteen (16)**".

Page 6, line 3, delete "four (4)" and insert "**eight (8)**".

Page 6, line 6, delete "eight (8)" and insert "**four (4)**".

Page 6, delete lines 37 through 42, begin a new paragraph and insert:

**"(b) A judge who wishes to be retained in office shall file a statement with the clerk during the period described in IC 3-8-2-4 during which a declaration of candidacy must be filed in the year in which the judge's term expires. The judge's statement must include the following information:**

**(1) A statement indicating that the judge wishes to have the question of the judge's retention placed on the ballot.**

**(2) A statement of the judge's name as:**

**(A) the judge wants the judge's name to appear on the ballot; and**

**(B) a candidate's name is permitted to appear on the ballot under IC 3-5-7.**

**(3) If the judge is affiliated with a political party, the name of that political party. The judge may indicate in the statement that the judge is not affiliated with a political party. For purposes of this subdivision, a judge's affiliation with a political party is determined as provided in IC 3-8-2-7(a)(4).**

**(4) A statement that the judge requests the name on the judge's voter registration record be the same as the name the judge uses on the statement. If there is a difference between the name on the judge's statement and the name on the judge's voter registration record, the clerk shall change the name on the judge's voter registration record to be the same as the name on the judge's statement.**

**If a judge does not file a statement under this subsection, the clerk shall, not later than March 1, notify the Marion County judicial selection committee in writing that the judge does not wish to continue in office after the end of the judge's term of office.**

**(c) If a judge claims affiliation with a political party required to conduct a primary election under IC 3-10-1, the question of the judge's retention shall be placed on the primary election ballot as provided in IC 3-10-1.**

**(d) This subsection applies to a judge who does not claim affiliation with a political party required to conduct a primary election under IC 3-10-1. A public question regarding retention of the judge shall be placed on the general election ballot as provided in 3-11-2 and this chapter.**



**(e) This subsection applies to a judge:**

- (1) who does not file a statement under subsection (b); and**
- (2) whose term expires during the year in which the question of the retention of the judge would have been placed on the general election ballot.**

The term of a judge expires December 31 of the year in which the question of the judge's retention would have been placed on the ballot.

**(f) This section applies to a judge:**

- (1) who files a statement under subsection (b); and**
- (2) whose retention is rejected by the electorate during the primary election or general election.**

The term of a judge whose retention is rejected by the electorate during the primary election or general election ends when the judge's term expires. However, if the judge has filed a petition for a recount under IC 3-12-6, the term of the judge does not end until the recount commission has issued a certificate under IC 3-12-6-22 stating that the electorate has rejected the retention of the judge.

**(g) This subsection applies only to the question of the retention of a judge placed on a primary election ballot. The question of approval or rejection of a judge shall be placed on the primary election ballot in the form prescribed by IC 3-10-1 and must state:**

**"Shall Judge (insert here the name of the judge as stated under subsection (b)(2)) be retained in office?"**

If a majority of the ballots cast by the electors voting on the question in the primary election is "Yes", a public question on the retention of the judge shall be placed on the general election ballot as provided in subsection (h). If a majority of the ballots cast by the electors voting on the question is not "Yes", the following apply:

- (1) The judge whose name appeared on the question is rejected.**
- (2) A public question on the retention of the judge may not be placed on the general election ballot.**
- (3) The clerk shall, not later than July 1, notify the Marion County judicial selection committee in writing that the judge is not eligible to have the question of the judge's retention placed on the general election ballot.**
- (4) The office of the judge becomes an open judicial seat on January 1 following the general election.**
- (5) The open judicial seat shall be filled by appointment by the committee under section 13.3 of this chapter.**

**(h) This subsection applies only to the question of the retention**





of a judge placed on a general election ballot. If the question of a judge's retention is required to be on the ballot at a general election, the question of approval or rejection of the judge shall be placed on the general election ballot in the form prescribed by IC 3-11-2 and must state:

"Shall Judge (insert here the name of the judge as stated under subsection (b)(2)) be retained in office?"

If a majority of the ballots cast by the electors voting on the question is "Yes", the judge whose name appeared on the question shall be approved for a six (6) year term beginning January 1 following the general election as provided in section 13.1 of this chapter. If a majority of the ballots cast by the electors voting on the question is not "Yes", the following apply:

- (1) The judge whose name appeared on the question is rejected.
- (2) The office of the rejected judge becomes an open judicial seat on January 1 following the rejection.
- (3) The open judicial seat shall be filled by appointment by the committee under section 13.3 of this chapter."

Delete page 7.

Page 8, delete lines 1 through 3.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 352 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 5, Nays 2.

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#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 352, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 3.

Page 4, delete lines 1 through 12.

Page 4, delete lines 19 through 42.

Delete pages 5 through 6.

Page 7, delete lines 1 through 23.

ES 352—LS 6923/DI 106



Page 8, delete lines 29 through 42, begin a new paragraph and insert:

"SECTION 3. IC 3-11-2-10.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 10.1. (a) This section applies only to a public question concerning the retention in office of a judge of the Marion superior court under IC 33-33-49.**

**(b) The question of the retention of the judge at the general election shall be placed on the ballot at the same row or column level of the ballot where the question of other judges is placed on the ballot but in a column or row where independent candidates are placed on the ballot.**

**(c) If the question of the retention of more than one (1) judge is placed on a ballot, the judges shall be placed on the ballot in alphabetical order according to surname."**

Page 9, delete lines 1 through 8.

Page 10, line 19, delete "an open judicial".

Page 10, line 20, delete "office,".

Page 10, line 20, delete "vacancy," and insert "**vacancy**".

Page 11, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 7. IC 33-33-49-13.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 13.1. (a) As used in this chapter, "committee" refers to the Marion County judicial selection committee established by subsection (b).**

**(b) The Marion County judicial selection committee is established to select nominees for the court.**

**(c) The committee consists of the following fourteen (14) members:**

**(1) Four (4) attorneys who reside in Marion County, appointed as follows:**

**(A) One (1) attorney appointed by the speaker of the house of representatives.**

**(B) One (1) attorney appointed by the minority leader of the house of representatives.**

**(C) One (1) attorney appointed by the president pro tempore of the senate.**

**(D) One (1) attorney appointed by the minority leader of the senate.**

**A person appointed under this subdivision may not be a member of the general assembly.**

**(2) The president of the Indianapolis bar association or the**



president's designee. If the president does not reside in Marion County, the president must appoint a designee who resides in Marion County.

(3) The president of the Marion County bar association or the president's designee. If the president does not reside in Marion County, the president must appoint a designee who resides in Marion County.

(4) The president of the Indiana Trial Lawyers Association or the president's designee. If the president does not reside in Marion County, the president must appoint a designee who resides in Marion County.

(5) The president of the Defense Trial Counsel of Indiana or the president's designee. If the president does not reside in Marion County, the president must appoint a designee who resides in Marion County.

(6) Two (2) members appointed by the chairperson of each major political party (as defined by IC 3-5-2-30(2)) in Marion County. Each of the four (4) members appointed under this subdivision must reside in Marion County.

(7) The chief judge of the Indiana court of appeals or a designee of the chief judge who is a judge of the Indiana court of appeals. The chief judge or chief judge's designee serves as the vice-chairperson of the committee.

(8) The chief justice of Indiana or a designee of the chief justice who is a justice of the Indiana supreme court. The chief justice or chief justice's designee serves as the chairperson of the committee.

(d) Each member described in subsection (c)(1) through (c)(5) must be a member of the Indianapolis Bar Association or the Marion County Bar Association.

(e) If a member of the committee is employed by a law firm, no other person employed by the same law firm may be appointed to the committee.

(f) Each member of the committee who is not an ex officio member serves a four (4) year term, beginning on January 1, 2017, and ending on December 31, 2020. A member of the committee may be reappointed for one (1) or more additional four (4) year terms. If a member is appointed to fill a vacancy, the member serves during the unexpired term of his or her predecessor and may be reappointed for one (1) or more additional four (4) year terms. For purposes of this section, the designee of a person described in subsection (c)(2) through (c)(5) is not an ex officio



member.

(g) If a vacancy exists on the committee, the appointing authority who appointed the former member whose position has become vacant shall appoint an individual to fill the vacancy.

(h) An ex officio member of the committee ceases to be a member of the committee at the time the person no longer holds the office that entitles the person to be a member of the committee. For purposes of this section, the designee of a person described in subsection (c)(2) through (c)(5) is not an ex officio member.

(i) A member of the committee described in subsection (c)(1) through (c)(6) who no longer resides in Marion County is considered to have resigned from the committee. A member of the committee who no longer resides in Marion County shall notify the chairperson in writing.

(j) Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative members of interim study committees established by the legislative council.

(k) A quorum consists of nine (9) members of the committee.

(l) The affirmative votes of nine (9) members of the committee are required for the committee to take official action with respect to any candidate for judicial office.

(m) The committee shall appoint and nominate judicial candidates for the Marion superior court in accordance with section 13.3 of this chapter.

(n) The committee meets upon call of the chairperson.

(o) The committee shall meet in the statehouse, or in any other appropriate location in Marion County, as determined by the chairperson.

(p) Except as otherwise provided in subsection (q), or otherwise provided in this chapter, the committee may adopt its own policies and operating procedures. However, the commission shall meet in executive session under IC 5-14-1.5-6.1 for the consideration of a candidate for judicial appointment, and for consideration of a recommendation concerning retention (as defined in IC 33-33-49-13.7).

(q) The following requirements apply to committee meetings:

- (1) Notice of executive session must be given in the manner prescribed by IC 5-14-1.5-5.
- (2) All interviews of candidates must be conducted in executive session.
- (3) The committee shall announce its nominations and



**recommendations concerning retention at a public meeting. However, the number of votes received by a candidate and the number of votes in favor of or opposed to a recommendation concerning retention are confidential.**

**(r) A former member of the committee may not be appointed or nominated as a judge of the Marion superior court if the person has served as a member of the committee within the previous two (2) years."**

Page 11, line 12, delete "IC 33-33-49-13.1" and insert "IC 33-33-49-13.2".

Page 11, line 14, delete "Sec. 13.1." and insert "**Sec. 13.2.**".

Page 12, line 4, delete "Except as provided in section 13.4 of this chapter, the" and insert "**The**".

Page 12, line 22, delete "IC 33-33-49-13.2" and insert "IC 33-33-49-13.3".

Page 12, line 24, delete "Sec. 13.2." and insert "**Sec. 13.3.**".

Page 13, delete lines 13 through 21.

Page 13, line 22, delete "(e)" and insert "**(c)**".

Page 13, delete lines 30 through 42.

Page 14, delete lines 1 through 21.

Page 14, line 22, delete "of a judge placed on a general election ballot.", begin a new paragraph and insert:

**"(d)**".

Page 14, line 32, delete "section 13.1" and insert "**section 13.2**".

Page 14, line 37, delete "an open judicial" and insert "**vacant**".

Page 14, line 38, delete "seat".

Page 14, line 39, delete "open judicial seat" and insert "**vacancy**".

Page 14, line 39, delete "by appointment by the" and insert "**in accordance with this chapter.**".

Page 14, delete line 40.

Page 14, line 41, delete "IC 33-33-49-13.3" and insert "IC 33-33-49-13.4".

Page 15, line 1, delete "Sec. 13.3." and insert "**Sec. 13.4.**".

Page 15, line 1, delete "(a) The following".

Page 15, delete lines 2 through 15.

Page 15, line 16, delete "(b)" and insert "**(a)**".

Page 15, line 16, delete "an open judicial seat" and insert "**a vacancy**".

Page 15, line 17, delete "appoint a judge" and insert "**nominate three (3) candidates to the governor**".

Page 15, line 18, delete "open judicial seat" and insert "**vacancy**".

Page 15, line 18, delete "subsection (e)." and insert "**this section.**".



Page 15, delete lines 19 through 21.

Page 15, line 22, delete "(d)" and insert "(b)".

Page 15, line 22, delete "an appointment or" and insert "a".

Page 15, line 23, delete "under section 13.4" and insert "**a recommendation concerning retention under section 13.7**".

Page 16, delete lines 12 through 29.

Page 16, line 30, delete "(f) This subsection applies only to a vacancy." and insert "(c)".

Page 16, line 42, delete "two (2)" and insert "**three (3)**".

Page 17, line 2, delete "The".

Page 17, delete lines 3 through 7.

Page 17, line 8, delete "(g)" and insert "(d)".

Page 17, line 11, delete "A nominee appointed under this", begin a new paragraph and insert:

**"(e) In no event may more than fifty-two percent (52%) of the judges serving on the Marion superior court be members of the same political party."**

Page 17, delete lines 12 through 42, begin a new paragraph and insert:

**"SECTION 11. IC 33-33-49-13.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 13.7. (a) This section applies to each sitting judge who will stand for retention under section 13.3 of this chapter, including a person who served as a judge of the Marion superior court on December 31, 2016.**

**(b) The following definitions apply throughout this section:**

**(1) "News media" includes:**

- (A) a newspaper of general circulation in Marion County;**
- (B) one (1) or more broadcasters serving Marion County;**
- (C) any person who uses a blog or similar Internet web site to provide information or commentary concerning the judiciary or political matters of interest to residents of Marion County; and**
- (D) any other appropriate source of news or information for Marion County residents.**

**(2) "Recommendation concerning retention" means a recommendation from the committee that a judge:**

- (A) should be retained in office; or**
- (B) should not be retained in office;**

**based on the qualifications and performance of the judge.**

**(3) "Voter outreach organization" includes any organization that has the goal of informing voters in Marion County about**



issues and candidates in upcoming elections.

(c) Before a judge may stand for retention under section 13.3 of this chapter, the judge must appear before the committee to permit the committee to issue a recommendation to the voters concerning the judge's qualifications and suitability to continue to hold judicial office.

(d) At the time a judge files a statement under section 13.3 of this chapter that the judge wishes to be retained in office, the judge shall:

(1) notify the committee that the judge wishes to be retained in office; and

(2) provide the committee with a written statement describing the judge's qualifications, with particular emphasis on the matters described in section 13.4(b) of this chapter.

(e) After receiving the materials described in subsection (d), the committee shall promptly schedule a hearing to consider the materials submitted by the judge and interview the judge. Each judge is entitled to a hearing before the committee. The hearings shall be held in executive session.

(f) A judge is presumed qualified. The affirmative votes of at least nine (9) committee members are required to find that a judge is not qualified.

(g) If the committee finds that a judge is not qualified, the committee shall do the following:

(1) Through the chairperson, place on the web sites of the Indiana supreme court and the Indiana court of appeals, the following statement: "After considering the qualifications of Judge (insert name here) and Judge (insert name here)'s performance in office, the Marion County Judicial Selection Committee finds that Judge (insert name here) IS NOT qualified and SHOULD NOT BE retained in office."

(2) Issue the following statements to news media and voter outreach organizations: "After considering the qualifications of Judge (insert name here) and Judge (insert name here)'s performance in office, the Marion County Judicial Selection Committee finds that Judge (insert name here) IS NOT qualified and SHOULD NOT BE retained in office."

(3) Take any other steps reasonably calculated to inform the general public in Marion County of the committee's determination.

(h) If the committee does not find that a judge is unqualified, the committee shall do the following:



**(1) Through the chairperson, place on the web sites of the Indiana supreme court and the Indiana court of appeals, the following statement: "After considering the qualifications of Judge (insert name here) and Judge (insert name here)'s performance in office, the Marion County Judicial Selection Committee finds that Judge (insert name here) IS qualified and SHOULD BE retained in office."**

**(2) Issue the following statements to news media and voter outreach organizations: "After considering the qualifications of Judge (insert name here) and Judge (insert name here)'s performance in office, the Marion County Judicial Selection Committee finds that Judge (insert name here) IS qualified and SHOULD BE retained in office."**

**(3) Take any other steps reasonably calculated to inform the general public in Marion County of the committee's determination.**

**(i) Subject to section 13.1 of this chapter, the committee may adopt policies and operating procedures to implement this section."**

Delete page 18.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 352 as printed January 29, 2016.)

WASHBURNE

Committee Vote: yeas 8, nays 2.

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#### HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 352 be recommitted to a Committee of One, its sponsor, with specific instructions to amend as follows:

Page 7, delete lines 20 through 36, begin a new paragraph and insert:

**"(p) Except as otherwise provided in subsection (q), or otherwise provided in this chapter, the committee may adopt its own policies and operating procedures. The rules must comply with this chapter and include procedures by which eligible candidates for a vacancy in the Marion superior court may submit their names to the committee. The rules are public records, and the meetings of the**

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committee at which the rules are considered for initial adoption or amendment must be publicly announced and open to the public.

(q) Notwithstanding IC 5-14-1.5-2, the committee is a public agency for the purposes of IC 5-14-1.5. The committee may meet in executive session under IC 5-14-1.5-6.1 for the consideration of a candidate for appointment to or retention on the Marion superior court if:

- (1) notice of the executive session is given in the manner prescribed by IC 5-14-1.5-5;
- (2) all interviews of candidates are conducted at meetings open to the public; and
- (3) copies of all attributable communications (as defined in subsection (r)) concerning the candidates have been provided to all committee members and made available for public inspection and copying.

(r) As used in this subsection, "attributable communication" refers to a communication containing the sender's name, address, and telephone number. The committee shall provide a copy of all attributable communications concerning a candidate for appointment to or retention on the Marion superior court to each member of the committee. An attributable communication becomes available for public inspection and copying under IC 5-14-3-3 after a copy is provided to each member of the committee. The committee may not consider a communication other than an attributable communication in evaluating a candidate for appointment to or retention on the Marion superior court."

Page 7, line 37, delete "(r)" and insert "(s)".

(Reference is to ESB 352 as printed February 19, 2016.)

FRIZZELL

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#### COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred Engrossed Senate Bill 352, begs leave to report that said bill has been amended as directed.

FRIZZELL

