

# HOUSE BILL REPORT

## ESB 6342

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to municipal court judges and commissioners.

**Brief Description:** Changing the election and appointment provisions for municipal court judges.

**Sponsors:** Senators Kline, Esser and Pflug; by request of Board For Judicial Administration.

**Brief History:**

**Committee Activity:**

Judiciary: 2/20/06, 2/22/06 [DP].

<p><b>Brief Summary of Engrossed Bill</b></p> <ul style="list-style-type: none"><li>• Requires election of all municipal court judges.</li></ul>
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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 6 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Rodne, Assistant Ranking Minority Member; Kirby and Serben.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Priest, Ranking Minority Member; Springer and Wood.

**Staff:** Edie Adams (786-7180).

**Background:**

Municipal courts are courts of limited jurisdiction that hear cases involving infractions or crimes that are violations of city ordinances. Cities have several options in how to provide municipal court services. The city can contract with the district court to provide court services; establish a municipal department of the district court; or establish an independent municipal court. In addition, some cities contract with other cities for court services.

A judge of the municipal court serves a four-year term and must be an attorney admitted to practice law in Washington, except that in a municipality with less than 5,000 population, the judge may be a non-attorney who has passed the qualifying examination for a lay judicial officer by January 1, 2003. A municipal court judge must be a resident of the county in which the court resides, but does not need to be a resident of the city in which the court is created.

However, in a municipal court with a part-time judge where a commissioner has not been appointed, the part-time judge does not have to be a resident of the county where the court is located.

A full-time municipal court judge position (35 hours per week) must be filled by election. Additional positions that are by themselves or in combination equal to more than one-half of a full-time judge position also must be filled by election. Part-time judge positions may be filled by appointment or election at the option of the city. The city may appoint a district judge as its municipal judge if the municipal judge position is part-time.

A judge of the municipal court may appoint a commissioner, who holds office at the pleasure of the appointing judge and has the same power, authority, and jurisdiction as the appointing judge. The commissioner must be a lawyer admitted to practice in Washington or a non-lawyer who has passed the qualifying examination for lay judges.

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### **Summary of Bill:**

The statute governing independent municipal courts is amended to require election of all municipal court judges.

The mayor of a municipality must initially appoint a judge or judges for a newly created municipal court. The appointed judge serves until January 1 of the year following the next election when other city elected positions are normally elected.

The legislative authority of the municipality must provide by ordinance for the number of full- and part-time judges to be elected. Municipal court judge elections must be held at the same time as elections for other elected city offices.

Procedures are established for conducting municipal court judge elections. Where there is more than one judge position for a municipal court, the election official for the county in which the majority of city or town residents reside must designate each judge position by number. A candidate may run for only one of the numbered positions and must designate that numbered position when filing a declaration of candidacy.

Where a void in election or lapse of election occurs in a city or town with a population of less than 10,000, the filings for office may not be reopened and the mayor must appoint a qualified person to serve the entire term for the position. The legislative authority of the city or town may confirm this appointment if it has the general power of confirmation over mayoral appointments.

A municipal court judge may appoint a non-lawyer as a commissioner only if the person passed the qualifying examination for lay judges by January 1, 2003.

The terms of municipal court judges serving on July 1, 2006, and municipal judges appointed to terms commencing before January 1, 2010, expire on January 1, 2010. The terms of their successors commence on that date.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** This bill is not about how judges are selected; rather it is about how they are retained. We need to make sure we have a system that will ensure judicial independence, and election of judges is the way to do this. Election of judges ensures that the citizens of all cities, whether large or small, are equally protected and will have their disputes resolved by an independent judge at the choosing of the people. Appointment of judges does not necessarily result in better quality judges. The cities' contention that election of judges will create a significant burden is without merit. The cost of adding a single position to an election ballot would be minimal and only incurred once every four years.

Some jurisdictions have voluntarily decided to elect their judges because they want the judges to be independent and accountable to the people. The fact that a judge is appointed creates a perception problem. The city council and the mayor think of an appointed judge as working for the mayor rather than being an independent branch of government. Conflicts about court staff illustrate this. The staff of the courts are the responsibility of the judges, but where judges are appointed, the city views the court staff as city staff. Attorneys also can perceive appointed judges differently. For example, there is the perception that the prosecutor and the judge are on the same side since they are both city employees. These perceptions are troubling. Election of independent judges is very important for the confidence of the public in our judicial system.

**Testimony Against:** Appointment is a better way to select judges than election, especially in smaller cities where there may not be many candidates. Where judges are appointed, the mayor can take a look at the qualifications, education, and experience of the individual to ensure that a well-qualified person is selected. Judges are in a different capacity than policymakers, who can run on the positions they take on issues. Judges don't have that ability. Cities want to have independent judges, but they don't agree that election is the way to get there.

There are other methods of dealing with the independence issue. A Court Independence Response Team (CIRT) was established to address issues regarding perceived violations of the separation of powers. The CIRT developed policies that have helped to assure judges' independence. For example, they developed a professional services agreement that specifies a four-year appointment term to ensure judicial independence and that provides that termination is allowed only pursuant to applicable state law. There is also a Court Action Team that exists to address differences of opinion or perceived violations of separation of powers issues. Finally, newly-elected officials are now receiving training relating to separation of powers issues.

**Persons Testifying:** (In support) Marilyn Paja, District and Municipal Court Judges Association and Board for Judicial Administration; Deanna Dawson, Edmonds City Council; and Jeff Hall, Board for Judicial Administration.

(Opposed) Tammy Fellin, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying:** None.