OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

H.B. 268
136th General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 268's Bill Analysis

Version: As Passed by the Senate

Primary Sponsors: Reps. Humphrey and Click

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill reduces the amount of time that a person must wait to apply for a certificate of qualification for employment (CQE) if the person served a period of incarceration for a felony offense.
- The Ohio Department of Rehabilitation and Correction, courts of common pleas, and probation departments will generally expend more time and effort to process and review additional CQE applications likely to be filed as a result of reducing the wait time for certain felony offenders. Any increase in administrative workload and related costs will depend on the number of CQE applications received and the scope of review for these applications. Some of these costs could be offset by filing fees, if collected.

Detailed Analysis

The bill reduces the amount of time that a person who has been incarcerated for a felony must wait before applying for a certificate of qualification for employment (CQE). The bill eliminates the requirement that the person must wait for all periods of imposed supervision to expire before filing a petition for a CQE, effectively allowing the person to simply wait until one year has passed from the time that they are released. As a result, the bill could create an influx of CQE applications from individuals that currently are under some form of supervision and prevented (or more quickly denied) from applying for a CQE under current law. The number of individuals this could apply to is uncertain. Judges can sentence offenders up to five years of community control and up to five years of post-release control. Because the length of terms varies, it is difficult to predict how much sooner some individuals can file under the bill.

Fiscal effect

There is a two-track system for applying for a CQE – a person can start with the Ohio Department of Rehabilitation and Correction (DRC) or start with the court of common pleas in their residential county. All applications are subject to judicial review.

DRC anticipates that the elimination of the waiting period for felony offenders while on supervision could result in additional CQE applications, at least initially. There would be administrative costs to review and process these additional applications in the short term. The total costs would depend on the number of applications received and the scope of review associated with each application. The longer term impact on applications is more difficult to project but DRC generally expects application levels to stabilize over time. According to DRC, many individuals who are currently on supervision apply for their CQE and are denied based on their supervision status. Individuals in that group would likely apply again or earlier and have their applications considered.

Anecdotal information suggests that most courts handle a relatively small number of CQE filings annually. However, based on conversations with the Ohio Judicial Conference (OJC), the review process for a CQE petition involves a considerable amount of time and effort. According to OJC staff, the change in workload for courts to review additional CQEs may be incremental but will have a compounding effect. The additional workload for the courts and supporting departments, like probation/parole, will be highly variable. For a court that reviews a higher number of applications, the related administrative costs would likely be higher than a court that reviews a smaller number of CQE applications.

Under continuing law, unless waived or partially waived, a petitioner is required to pay a $50 filing fee distributed as follows: $30 credited to the state GRF and $20 credited to the county general fund. Under current practice as it relates to CQE petitions, some courts also charge court cost and special project fees. The bill may affect the timing of fee revenue, as certain petitions may be filed sooner. The amount of revenue generated depends on demand, as well as the frequency with which the filing fee is waived or partially waived due to indigency.

CQE statistics

According to annual CQE petition summary data available on DRC's website, the number of petitions administered annually statewide varies widely from year to year. Based on calendar year (CY) 2016 and CY 2017 survey data, processing time required three or more hours for the initial investigation and around 30% of petitions required additional investigative work. LBO assumes that this survey data is still reflective of current trends.

The table below summarizes the number of CQE petitions managed annually from CYs 2017-2022. A study of the annual reports showed that the largest pools of petitioners were in the state's urban counties.

Table 1. Number of CQE Petitions Managed Annually, CYs 2017-2022

2017	2018	2019	2020	2021	2022
5,097	3,803	7,302	1,223	8,280	1,277

Note: Total numbers are for counties with ten or more petitions and do not reflect total numbers.

The annual reports for 2017 contain workload data generated by a survey of the courts of common pleas.[1] The responses to certain questions are summarized in the table below, including the number of hours the court expended on the initial investigation, the frequency with which the court ordered an additional investigation, who performed that investigation, and the amount of time spent.

Table 2. Court of Common Pleas CQE Workload Survey, CY 2017

Category	Data
Court hours on initial investigation	Under 3 hours: 92% 3-5 hours: 6% +5 hours: 2%
Order additional investigations	30% of cases
Who collected	Probation Department: 69% Clerk: 0% Court: 3% Other: 28%
Time spent	Under 3 hours: 35% 3-5 hours: 0% +5 hours: 65%

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[1] This is the most recent and readily available workload survey data.