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COMMENTARY

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Don't Drop the Ball a Third Time in Trying to Create a Business Court

New Jersey's Legislature and judiciary are widely regarded as progressive and continually evolving in their outlook. Their recent inability to take action to create specialized business courts, however, may result in a diminution of that reputation.

New York, Delaware and a handful of counties in Pennsylvania have created such courts in one form or another. As a result, those neighboring jurisdictions continue to widen the gap between themselves and the Garden State, in the eyes of business.

Perhaps recognizing that reality, New Jersey lawmakers in the past two legislative sessions proposed bills that would have created a business court in the Superior Court. The measures died when the sessions ended.

A third attempt, A-2520, was introduced on Sept. 12 by Assemblymen David Russo, R-Bergen, and Wilfredo Caraballo, D-Essex. The proposed legislation provides that the business courts have jurisdiction over an array of business cases and that such matters be

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tried before a judge without a jury.

The measure would set up a Special Business Part in the Law Division rather than a new division as outlined in the original bill. The new bill also calls for 12 new judgeships and a broad definition of cases that would be handled in

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the Special Business Part, which had been missing in the previous measures.

The legislation has been praised because it would empower the chief justice to assign trial judges based on ability, experience and need, and to apportion case types among the trial divisions.

The proposal is consistent with

similar initiatives throughout the country designed to create favorable conditions for existing and new businesses.

Moreover, the move follows the trend to create specialized courts for various types of cases, including drug courts, community dispute resolution centers and others. While each of these courts targets varying problems, they all try to use the authority of the courts in new ways, with the goal of improving the process for litigants.

Specialized business courts assign the resolution of disputes to experienced jurists, familiar with the particular issues presented in the business context. In contrast, the current system in New Jersey provides for the rotation of judges among civil, criminal, family and other parts. That arrangement functions at the expense of litigants and deprives judges of the opportunity to develop an expertise in a particular area.

New Jersey's foray into specialized business courts began in 1993, when the Superior Court in Essex County experimented with assigning all identified commercial matters to one judge for management and trial.

Based on data gathered from that program, Chief Justice Robert Wilentz created a pilot program in 1996 in the Bergen and Essex vicinages. Judges with business or commercial backgrounds were assigned to handle such matters. The success of the pilot program prompted the proposed legislation.

Nonetheless, the proposed legislation has been criticized for several rea-

sons. Foremost, the plan to create additional judgeships in a court system already plagued by judicial vacancies is viewed as a serious flaw. Critics also suggest that a new business court's subject matter would encroach on the Chancery Division. Finally, critics fear that by eliminating the right to a trial by jury, the legislation would trample the business litigants' constitutional rights.

While there is no end in sight to the problems created by judicial vacancies, the remaining criticisms can be easily addressed by the Legislature or the Supreme Court.

By clearly defining the role of the business court, there would be no diminution of the Chancery Division's

role. Likewise, by conferring on the business court exclusive jurisdiction over specific matters, parties could waive their right to a jury in exchange for expediency.

The Legislature's two failures to bring the bill to a vote indicate that business constituents are not aware such a bill is pending or that it has many benefits.

A specialized court would create a more efficient forum for business disputes and make New Jersey a more attractive location for business. One example is Delaware, nationally known for its business-friendly system, which receives about 20 percent of its annual revenue from nonresident businesses in

the form of taxes and fees.

In light of the Legislature's failure to enact the proposed legislation during the past two legislative sessions, this newest bill will likely follow the same path, unless business constituents who support the proposed changes urge their lawmakers to vote in favor of this bill.

At the same time, the New Jersey judiciary need not wait to implement a program aimed at addressing concerns of business litigants. Attorneys who support the concept of a business court should contact their local bar associations and assignment judges in the hope of expanding the pilot program in Bergen and Essex counties across the state. ■