

1 S.305

2 Introduced by Senator Flory

3 Referred to Committee on

4 Date:

5 Subject: Judiciary; qualification of judges; judicial selection

6 Statement of purpose of bill as introduced: This bill proposes to establish
7 residency requirements for judicial officers and criteria for judicial candidates
8 and to amend the judicial nominating and selection process.

9 An act relating to qualifications of judicial officers and judicial selection

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 4 V.S.A. § 5 is amended to read:

12 § 5. TERM OF JUSTICES

13 (a) The term of the ~~justices~~ Justices, except in case of an appointment to fill
14 a vacancy, shall be for a term of six years from and including April 1 in the
15 year of such appointment or retention under subsection 4(c) of this title. A
16 Justice shall be a resident of Vermont during his or her term. When a ~~justice~~
17 Justice of the ~~supreme court~~ Supreme Court, who has sat at the hearing of a
18 cause, retires from office before such cause is decided, the ~~justice~~ Justice shall
19 remain a member of such ~~court~~ Court for the purpose of assisting in the
20 decision thereof and of signing the entry order provided that such service may

1 extend only to the following term of ~~court~~ Court. For such service, the ~~justice~~
2 Justice shall receive a reasonable compensation to be fixed by the ~~justices~~
3 Justices of such ~~court~~ Court and reasonable expenses while on office business.

4 * * *

5 Sec. 2. 4 V.S.A. § 71 is amended to read:

6 § 71. APPOINTMENT AND TERM OF SUPERIOR COURT JUDGES

7 (a) There shall be 32 ~~superior~~ Superior Court judges, whose terms of office
8 shall, except in the case of an appointment to fill a vacancy or unexpired term,
9 begin on April 1 in the year of their appointment or retention, and continue for
10 six years. A Superior Court judge shall be a resident of Vermont during his or
11 her term.

12 * * *

13 Sec. 3. 4 V.S.A. § 461 is amended to read:

14 § 461. OFFICE OF MAGISTRATE; JURISDICTION; SELECTION; TERM

15 * * *

16 (b) ~~A magistrate shall be an attorney admitted to practice in Vermont with~~
17 ~~at least four years of general law practice.~~ Magistrates shall be nominated,
18 appointed, and confirmed in the manner of ~~superior~~ Superior Court judges.

19 (c)(1) Terms of ~~office of~~ magistrates, except in the case of an appointment
20 to fill a vacancy or unexpired term, shall be for a term of six years from and
21 including April 1 in the year of the magistrate's appointment or retention. A

1 magistrate shall be a resident of Vermont during his or her term. A magistrate
2 shall remain in office until a successor is appointed and qualified, unless
3 sooner removed for cause or unless he or she resigns.

4 * * *

5 Sec. 4. 4 V.S.A. § 1001 is amended to read:

6 § 1001. ENVIRONMENTAL DIVISION

7 * * *

8 (d) ~~An environmental~~ A judge of the Environmental Division of the
9 Superior Court shall be appointed on April 1, for a term of six years or the
10 unexpired portion thereof. A judge of the Environmental Division of the
11 Superior Court shall be a resident of Vermont during his or her term.

12 * * *

13 Sec. 5. 4 V.S.A. § 601 is amended to read:

14 § 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

15 (a) A Judicial Nominating Board is created for the nomination of Supreme
16 Court Justices, Superior ~~court~~ Court judges, ~~Magistrates~~ judges of the
17 Environmental Division of the Superior Court, magistrates, the Chair of the
18 Public Service Board, and members of the Public Service Board.

19 (b) The Board shall consist of 11 members who shall be selected
20 as follows:

1 (1) The Governor shall appoint two members who are not attorneys
2 at law.

3 (2) The Senate shall elect three of its members, not all of whom shall be
4 members of the same party, and only one of whom may be an attorney at law.

5 (3) The House shall elect three of its members, not all of whom shall be
6 members of the same party, and only one of whom may be an attorney at law.

7 (4) Attorneys at law admitted to practice before the Supreme Court of
8 Vermont, and residing in the State, shall elect three of their number as
9 members of the Board. The Supreme Court shall regulate the manner of their
10 nomination and election.

11 (5) The members of the Board appointed by the Governor shall serve for
12 terms of two years and may serve for no more than three terms. The members
13 of the Board elected by the House and Senate shall serve for terms of two years
14 and may serve for no more than three consecutive terms. The members of the
15 Board elected by the attorneys at law shall serve for terms of two years and
16 may serve for no more than three consecutive terms. All appointments or
17 elections shall be between January 1 and February 1 of each odd-numbered
18 year, except to fill a vacancy. Members shall serve until their successors are
19 elected or appointed.

20 (6) The members shall elect their own chair who will serve for a term of
21 two years.

1 (c) Legislative members of the Board shall be entitled to per diem
2 compensation and reimbursement for expenses in accordance with 2 V.S.A.
3 § 406. Members of the Board who are not otherwise compensated by their
4 employer shall be entitled to per diem compensation and reimbursement for
5 expenses in the same manner as ~~board members~~ Board Members are
6 compensated under 32 V.S.A. § 1010. All compensation and reimbursement
7 shall be paid from the legislative appropriation.

8 ~~(d) The Judicial Nominating Board shall adopt rules under 3 V.S.A. chapter~~
9 ~~25 which shall establish criteria and standards for the nomination of qualified~~
10 ~~candidates for justices of the Supreme court, superior judges, magistrates, the~~
11 ~~Chair of the Public Service Board, and members of the Public Service Board.~~
12 ~~The criteria and standards shall include such factors as integrity, legal~~
13 ~~knowledge and ability, judicial temperament, impartiality, health, experience,~~
14 ~~diligence, administrative and communicative skills, social consciousness, and~~
15 ~~public service.~~

16 (e) A quorum of the Board shall consist of eight members.

17 ~~(f)~~(e) The ~~board~~ Board is authorized to use the staff and services of
18 appropriate ~~state~~ State agencies and departments as necessary to conduct
19 investigations of applicants.

1 Sec. 6. 4 V.S.A. § 602 is amended to read:

2 § 602. DUTIES

3 (a) Prior to submission of names of qualified candidates for ~~justices~~
4 Justices of the ~~supreme court~~ Supreme Court, ~~superior~~ Superior Court judges,
5 judges of the Environmental Division of the Superior Court, magistrates, the
6 chair of the ~~public service board~~ Chair of the Public Service Board, and
7 members of the ~~public service board to the governor~~ Public Service Board to
8 the Governor, the ~~board~~ Board shall submit to the court administrator of the
9 ~~supreme court~~ Supreme Court a list of all candidates, and the administrator
10 shall disclose to the ~~board~~ Board information solely about professional
11 disciplinary action taken or pending concerning any candidate. If candidates
12 for the Public Service Board are admitted to practice law in Vermont, the
13 Nominating Board shall submit to the Court Administrator a list of those
14 candidates, and he or she shall disclose to the Board information solely about
15 professional disciplinary action taken or pending concerning such candidates.
16 From the list of candidates presented, the ~~judicial nominating board~~ Judicial
17 Nominating Board shall select by majority vote of the full Board, provided that
18 a quorum is present, ~~qualified the best~~ candidates for the position to be filled.

19 (b) Whenever a vacancy occurs in the office of a ~~supreme court justice or~~
20 Supreme Court Justice, a ~~superior judge~~ Superior Court judge, a judge of the
21 Environmental Division of the Superior Court, a magistrate, and the

1 Chairperson of the Public Service Board, or when an incumbent does not
2 declare that he or she will be a candidate to succeed himself or herself, the
3 ~~judicial nominating board~~ Judicial Nominating Board shall submit to the
4 ~~governor~~ Governor the names of as many persons as it deems ~~qualified~~
5 best-qualified to be appointed to the office. ~~There shall be included in the~~
6 ~~qualifications for appointment that the person shall be an attorney at law who~~
7 ~~has been engaged in the practice of law or a judge in the state of Vermont for a~~
8 ~~period of at least five out of the ten years preceding appointment, and with~~
9 ~~respect to a candidate for superior judge particular consideration shall be given~~
10 ~~to the nature and extent of the candidate's trial practice.~~ In accordance with
11 30 V.S.A. § 3, whenever a vacancy occurs for a member position on the Public
12 Service Board, the Governor shall submit at least five names of potential
13 nominees to the Judicial Nominating Board for review. The Judicial
14 Nominating Board shall submit to the Governor the names of candidates it
15 deems best-qualified. The Judicial Nominating Board shall submit to the
16 Governor a summary of the qualifications and experience of each candidate
17 whose name is submitted to the Governor, together with any further
18 information relevant to the matter.

19 (c) ~~All~~ Except as provided in subsection (d) of this section, proceedings of
20 the ~~board~~ Board, including the names of candidates considered by the ~~board~~

1 Board and information about any candidate submitted by the court
2 administrator or by any other source, shall be confidential.

3 (d) The following shall be public:

4 (1) operating procedures of the Board;

5 (2) standard application forms and any other forms used by the Board,
6 provided they do not contain personal information about a candidate or
7 confidential proceedings;

8 (3) all proceedings of the Board prior to the Board's receipt of the first
9 candidate's completed application form; and

10 (4) at the time the Board sends the names of the best-qualified
11 candidates to the Governor, the total number of applicants for the vacancy and
12 the total number of best-qualified candidates sent to the Governor.

13 (e) A candidate shall possess the following attributes:

14 (1) Integrity. A candidate shall possess demonstrated integrity.

15 (2) Legal knowledge and ability. A candidate shall possess a high
16 degree of knowledge of established legal principles and procedures, and have
17 demonstrated a high degree of ability to interpret and apply the law to specific
18 factual situations.

19 (3) Judicial temperament. A candidate shall possess a judicial
20 temperament, which includes common sense, compassion, decisiveness,
21 firmness, humility, open-mindedness, tact, and patience.

1 (4) Impartiality. A candidate shall exhibit an ability to make judicial
2 determinations in a manner free of bias.

3 (5) Professional experience. Except as otherwise provided by this
4 subdivision, a candidate shall be an experienced lawyer who has practiced law
5 for at least ten years, and shall have practiced law in Vermont for at least five
6 out of the ten years preceding his or her application to the Board. However:

7 (A) A candidate for a magistrate need only have practiced law for
8 five years, but shall have practiced law in Vermont for at least five out of the
9 ten years immediately preceding his or her application to the Board.

10 (B) A candidate for the position of Chair or member of the Public
11 Service Board shall not be required to be an attorney.

12 (6) Stamina. A candidate shall possess the physical and mental capacity
13 required by the position.

14 (7) Communication capability. A candidate shall possess demonstrated
15 oral and written capacities, with reasonable accommodations, required by
16 the position.

17 (8) Financial integrity. A candidate shall possess demonstrated
18 financial probity.

19 (9) Work ethic. A candidate shall demonstrate diligence.

20 (10) Vermont residency. A candidate for Supreme Court Justice, a
21 judge of the Superior Court, or magistrate shall be a Vermont resident for at

1 least one year prior to application to the Board. A candidate for Chair or
2 member of the Public Service Board shall not be required to be a
3 Vermont resident.

4 (11) Administrative capabilities. A candidate shall demonstrate
5 management and organizational skills or experience required by the position.

6 (f) Factors that should be given due consideration by the Board, but are not
7 required of a candidate, include:

8 (1) public, community, or military service;

9 (2) judicial experience in Vermont;

10 (3) for Superior Court, the nature and extent of the candidate's
11 trial practice;

12 (4) for judge of the Environmental Division of the Superior Court,
13 experience and expertise in environmental and zoning law; and

14 (5) for the Public Service Board Chair and Public Service Board
15 members, experience and expertise in utilities regulation.

16 Sec. 7. 4 V.S.A. § 603 is amended to read:

17 § 603. APPOINTMENT OF JUSTICES, JUDGES, MAGISTRATES,

18 PUBLIC SERVICE BOARD CHAIRS, AND MEMBERS

19 Whenever the ~~governor~~ Governor appoints a ~~supreme court justice~~ Supreme
20 Court Justice, a ~~superior judge~~ Superior Court judge, a judge of the
21 Environmental Division of the Superior Court, a ~~magistrate~~ magistrate, a ~~chair~~

1 ~~of the public service board~~ Chair of the Public Service Board, or a member of
2 ~~the public service board~~ Public Service Board, he or she shall select from the
3 list of names of qualified persons submitted by the ~~judicial nominating board~~
4 Judicial Nominating Board pursuant to law. The names of candidates
5 submitted and not selected shall remain confidential. If the Governor does not
6 select a candidate from the list of names of qualified candidates submitted by
7 the Board, the Board shall repeat the nomination process in accordance with
8 this chapter. Application during the second or subsequent round of candidate
9 selection for a vacancy shall be limited to persons who did not previously
10 apply for that particular vacancy. The names of qualified candidates
11 previously submitted to the Governor, but not chosen by the Governor, shall be
12 resubmitted to the Governor along with the names of the newly
13 selected candidates.

14 Sec. 8. EFFECTIVE DATE

15 This act shall take effect on July 1, 2014.