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S.91

Introduced by Senators Flory, Ashe, Campbell, Mullin, and Rodgers

Referred to Committee on Judiciary

Date: February 17, 2015

Subject: Judiciary; judicial nominating

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

~~An act relating to qualifications of judicial officers and judicial selection and retention~~

An act relating to procedures of the Judicial Nominating Board and qualifications of candidates for the positions of Justice, judge, magistrate, and Chair and member of the Public Service Board

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

~~Sec. 1. 4 V.S.A. § 601 is amended to read:~~

§ 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

* * *

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

* * *

(5) The members of the Board appointed by the Governor shall serve for terms of two years and may serve for no more than three consecutive terms.

~~The members of the Board elected by the House and Senate shall serve for~~

1 ~~terms of two years and may serve for no more than three consecutive terms.~~

2 The members of the Board elected by the attorneys at law shall serve for terms
3 of two years and may serve for no more than three consecutive terms. All
4 appointments or elections shall be between January 1 and February 1 of each
5 odd-numbered year, except to fill a vacancy. Members shall serve until their
6 successors are elected or appointed.

7 * * *

8 Sec. 2. 4 V.S.A. § 602 is amended to read:

9 § 602. DUTIES

10 (a)(1) Prior to ~~submission of~~ submitting to the Governor the names of
11 ~~qualified~~ candidates for ~~justices~~ Justices of the ~~supreme court~~ Supreme Court,
12 ~~superior~~ Superior Court judges, magistrates, the ~~chair of the public service~~
13 ~~board~~ Chair of the Public Service Board, and members of the ~~public service~~
14 ~~board to the governor~~ Public Service Board, the ~~board~~ Board shall submit to
15 the ~~court administrator~~ Court Administrator of the ~~supreme court~~ Supreme
16 Court a list of all candidates, and the administrator shall disclose to the ~~board~~
17 Board information solely about professional disciplinary action taken or
18 pending concerning any candidate. If candidates for the Public Service Board
19 are admitted to practice law in Vermont, the Nominating Board shall submit to
20 the Court Administrator a list of those candidates, and he or she shall disclose

1 ~~to the Board information solely about professional disciplinary action taken or~~
2 ~~pending concerning such candidates.~~

3 (2) From the list of candidates presented, the ~~judicial nominating board~~
4 Judicial Nominating Board shall select by majority vote, provided that a
5 quorum is present, ~~qualified~~ well qualified candidates for the position to be
6 filled.

7 (b) Whenever a vacancy occurs in the office of a ~~supreme court justice or~~
8 Supreme Court Justice, a ~~superior judge~~ Superior judge, a magistrate, or the
9 Chair of the Public Service Board, or when an incumbent does not declare that
10 he or she will be a candidate to succeed himself or herself, the ~~judicial~~
11 ~~nominating board~~ Judicial Nominating Board shall submit to the ~~governor~~
12 Governor the names of as many persons as it deems ~~qualified~~ well qualified to
13 be appointed to the office. ~~There shall be included in the qualifications for~~
14 ~~appointment that the person shall be an attorney at law who has been engaged~~
15 ~~in the practice of law or a judge in the state of Vermont for a period of at least~~
16 ~~five out of the ten years preceding appointment, and with respect to a candidate~~
17 ~~for superior judge particular consideration shall be given to the nature and~~
18 ~~extent of the candidate's trial practice.~~ In accordance with 30 V.S.A. § 3,
19 whenever a vacancy occurs for a member position on the Public Service Board,
20 the Governor shall submit at least five names of potential nominees to the
21 Judicial Nominating Board for review. The Judicial Nominating Board shall

1 ~~submit to the Governor the names of candidates it deems well qualified. The~~
2 Judicial Nominating Board shall submit to the Governor a summary of the
3 qualifications and experience of each candidate whose name is submitted to the
4 Governor, together with any further information relevant to the matter.

5 (c) ~~All~~ Except as provided in subsection (d) of this section, proceedings of
6 the ~~board~~ Board, including the names of candidates considered by the ~~board~~
7 Board and information about any candidate submitted by the ~~court~~
8 ~~administrator~~ Court Administrator or by any other source, shall be confidential.

9 (d) The following shall be public:

10 (1) operating procedures of the Board;

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

14 (3) all proceedings of the Board prior to the Board's receipt of the first
15 candidate's completed application; and

16 (4) at the time the Board sends the names of the candidates to the
17 Governor, the total number of applicants for the vacancy and the total number
18 of candidates sent to the Governor.

19 (e) A person shall be eligible as a candidate if, upon application,

20 (1) The person is a Vermont resident and admitted to practice law in
21 Vermont.

1 ~~(2) Except as otherwise provided by this subdivision, the person is an~~
2 experienced lawyer who has practiced law for at least ten years, and has
3 practiced law in Vermont for at least five out of the ten years preceding his or
4 her application to the Board. However:

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

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

10 (f) A candidate shall possess the following attributes:

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

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

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

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

1 ~~(5) Communication capability. A candidate shall possess demonstrated~~
2 ~~oral and written capacities, with reasonable accommodations, required by the~~
3 ~~position.~~

4 (6) Financial integrity. A candidate shall possess demonstrated financial
5 probity.

6 (7) Work ethic. A candidate shall demonstrate diligence.

7 (8) Administrative capabilities. A candidate shall demonstrate
8 management and organizational skills or experience required by the position.

9 (g) Factors that should be given due consideration by the Board, but are not
10 required of a candidate, include:

11 (1) public and community service;

12 (2) judicial experience in Vermont;

13 (3) for Superior Court, the nature and extent of the candidate's
14 courtroom experience; and

15 (4) for judge of the Environmental Division of the Superior Court,
16 experience and expertise in environmental and zoning law.

17 Sec. 3. EFFECTIVE DATE

18 ~~This act shall take effect on July 1, 2015.~~

Sec. 1. 4 V.S.A. § 601 is amended to read:

§ 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

(a) A Judicial Nominating Board is created for the nomination of Supreme Court Justices, Superior judges, magistrates, the Chair of the Public Service Board, and members of the Public Service Board.

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

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

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

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

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

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

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

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

(d) The Judicial Nominating Board ~~shall~~ may adopt rules under 3 V.S.A. chapter 25 which shall establish criteria and standards for the nomination of candidates for Justices of the Supreme Court, Superior judges, magistrates, and the Chair of the Public Service Board, and members of the Public Service Board based on the attributes identified in subsection 602(d) of this title. ~~The criteria and standards shall include such factors as integrity, legal knowledge and ability, judicial temperament, impartiality, health, experience, diligence, administrative and communicative skills, social consciousness, and public~~

~~service.~~ The application form shall not be included in the rules and may be developed and periodically revised at the discretion of the Board.

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

(f) The Board is authorized to use the staff and services of appropriate State agencies and departments as necessary to conduct investigations of applicants. The Office of Legislative Council shall assist the Board for the purpose of rulemaking.

(g) Except as provided in subsection (h) of this section, proceedings of the Board, including the names of candidates considered by the Board and information about any candidate submitted by the Court Administrator or by any other source, shall be confidential.

(h) The following shall be public:

(1) operating procedures of the Board;

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

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

(4) at the time the Board sends the names of the candidates to the Governor, the total number of applicants for the vacancy and the total number of candidates sent to the Governor.

Sec. 2. 4 V.S.A. § 602 is amended to read:

§ 602. DUTIES; JUSTICES, JUDGES, MAGISTRATES, AND THE CHAIR OF THE PUBLIC SERVICE BOARD

(a)(1) Prior to ~~submission of~~ submitting to the Governor the names of qualified candidates for justices Justices of the ~~supreme court~~ Supreme Court, superior Superior Court judges, magistrates, the chair of the public service board, and members of the public service board to the governor and the Chair of the Public Service Board, the ~~board~~ Judicial Nominating Board shall submit to the ~~court administrator of the supreme court~~ Court Administrator a list of all candidates, and the administrator he or she shall disclose to the ~~board~~ Board information solely about professional disciplinary action taken or pending concerning any candidate.

(2) From the list of candidates ~~presented~~, the ~~judicial nominating board~~ Judicial Nominating Board shall select by majority vote, provided that a quorum is present, ~~qualified~~ well-qualified candidates for the position to be filled.

~~(b) Whenever a vacancy occurs in the office of a supreme court justice or Supreme Court Justice, a superior judge Superior Court judge, magistrate, or Chair of the Public Service Board, or when an incumbent does not declare that he or she will be a candidate to succeed himself or herself, the judicial nominating board Board shall submit to the governor Governor the names of as many persons as it deems qualified well qualified to be appointed to the office. There shall be included in the qualifications for appointment that the person shall be an attorney at law who has been engaged in the practice of law or a judge in the state of Vermont for a period of at least five out of the ten years preceding appointment, and with respect to a candidate for superior judge particular consideration shall be given to the nature and extent of the candidate's trial practice.~~

~~(c) All proceedings of the board, including the names of candidates considered by the board and information about any candidate submitted by the court administrator or by any other source, shall be confidential.~~

~~(1) A candidate for judge or Justice shall be a Vermont resident and an experienced lawyer who has practiced law in Vermont for a minimum of ten years, with at least five years immediately preceding his or her application to the Board.~~

~~(2) A candidate for magistrate shall be a Vermont resident and an experienced lawyer who has practiced law in Vermont for at least five years immediately preceding his or her application to the Board.~~

~~(3) A candidate for Chair of the Public Service Board shall not be required to be an attorney; however if the candidate is admitted to practice law in Vermont, the Judicial Nominating Board shall submit the candidate's name to the Court Administrator, and he or she shall disclose to the Board information solely about professional disciplinary action taken or pending concerning the candidate. If a candidate is not admitted to practice law in Vermont, but practices a profession requiring licensure, certification, or other professional regulation by the State, the Judicial Nominating Board shall submit the candidate's name to the State professional regulatory entity and that entity shall disclose to the Board any professional disciplinary action taken or pending concerning the candidate.~~

~~(d) A candidate shall possess the following attributes:~~

~~(1) Integrity. A candidate shall possess a record and reputation for excellent character and integrity.~~

~~(2) Legal knowledge and ability. A candidate shall possess a high degree of knowledge of established legal principles and procedures and have~~

demonstrated a high degree of ability to interpret and apply the law to specific factual situations.

(3) Judicial temperament. A candidate shall possess an appropriate judicial temperament.

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

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

(6) Financial integrity. A candidate shall possess demonstrated financial probity.

(7) Work ethic. A candidate shall demonstrate diligence.

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

(9) Courtroom experience. For Superior Court, a candidate shall have sufficient trial or other comparable experience that ensures knowledge of the Vermont Rules of Evidence and courtroom procedure. For the Environmental Division of the Superior Court, a candidate shall have experience in environmental and zoning law.

(10) Other. A candidate shall possess other attributes the Board deems relevant as identified through its rules.

Sec. 3. 4 V.S.A. § 602a is added to read:

§ 602a. DUTIES; PUBLIC SERVICE BOARD MEMBERS

(a) In accordance with 30 V.S.A. § 3, whenever a vacancy occurs for a member position on the Public Service Board, the Governor shall submit at least five names of potential nominees to the Judicial Nominating Board for review. The Judicial Nominating Board shall submit to the Governor the names of candidates it deems well qualified. The Judicial Nominating Board shall submit to the Governor a summary of the qualifications and experience of each candidate whose name is submitted to the Governor, together with any further information relevant to the matter. Vacancies for the position of Chair of the Public Service Board shall follow the procedure set forth in section 602 of this title.

(b) A candidate for the position of member of the Public Service Board shall not be required to be an attorney; however, if the candidate is admitted to practice law in Vermont, the Judicial Nominating Board shall submit the candidate's name to the Court Administrator, and he or she shall disclose to

the Board information solely about professional disciplinary action taken or pending concerning the candidate. If a candidate is not admitted to practice law in Vermont, but practices a profession requiring licensure, certification, or other professional regulation by the State, the Judicial Nominating Board shall submit the candidate's name to the State professional regulatory entity and that entity shall disclose to the Board any professional disciplinary action taken or pending concerning the candidate.

(c) A candidate shall possess the attributes provided in subsection 602(d) of this title.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.