

1 H.866

2 Introduced by Committee on Judiciary

3 Date:

4 Subject: Judiciary; qualification of judges; judicial selection

5 Statement of purpose of bill as introduced: This bill proposes to require the
6 appointment and retention of Judicial Bureau hearing officers to follow the
7 same manner as for other judges, establish residency requirements for judicial
8 officers and criteria for judicial candidates, and to amend the judicial
9 nominating and selection process.

10 An act relating to qualifications of judicial officers and judicial selection
11 and retention

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

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

14 § 5. TERM OF JUSTICES

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

1 remain a member of such ~~court~~ Court for the purpose of assisting in the
2 decision thereof and of signing the entry order, provided that such service may
3 extend only to the following term of ~~court~~ Court. For such service, the ~~justice~~
4 Justice shall receive a reasonable compensation to be fixed by the ~~justices~~
5 Justices of such ~~court~~ Court and reasonable expenses while on office business.

6 * * *

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

8 § 71. APPOINTMENT AND TERM OF SUPERIOR COURT JUDGES

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

14 * * *

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

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

17 * * *

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

1 (c)(1) Terms of ~~office of~~ magistrates, except in the case of an appointment
2 to fill a vacancy or unexpired term, shall be for a term of six years from and
3 including April 1 in the year of the magistrate's appointment or retention. A
4 magistrate shall be a resident of Vermont during his or her term. A magistrate
5 shall remain in office until a successor is appointed and qualified, unless
6 sooner removed for cause or unless he or she resigns.

7 * * *

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

9 § 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

10 (a) A Judicial Nominating Board is created for the nomination of Supreme
11 Court Justices, Superior ~~Judges~~ Court judges, ~~Magistrates~~ judges of the
12 Environmental Division of the Superior Court, magistrates, Judicial Bureau
13 hearing officers, the Chair of the Public Service Board, and members of the
14 Public Service Board.

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

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

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

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

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

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

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

18 (c) Legislative members of the Board shall be entitled to per diem
19 compensation and reimbursement for expenses in accordance with 2 V.S.A.
20 § 406. Members of the Board who are not otherwise compensated by their
21 employer shall be entitled to per diem compensation and reimbursement for

1 expenses in the same manner as board members are compensated under
2 32 V.S.A. § 1010. All compensation and reimbursement shall be paid from the
3 legislative appropriation.

4 (d) The Judicial Nominating Board shall adopt rules under 3 V.S.A.
5 chapter 25 which shall establish criteria and standards for the nomination of
6 qualified candidates for ~~justices~~ Justices of the Supreme ~~court, superior Court,~~
7 Superior judges, magistrates, the Chair of the Public Service Board, and
8 members of the Public Service Board. The criteria and standards shall include
9 such factors as integrity, legal knowledge and ability, judicial temperament,
10 impartiality, health, experience, diligence, administrative and communicative
11 skills, social consciousness, and public service. The application form shall not
12 be included in the rules and may be developed and periodically revised at the
13 discretion of the Board.

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

15 (f)(e) The ~~board~~ Board is authorized to use the staff and services of
16 appropriate ~~state~~ State agencies and departments as necessary to conduct
17 investigations of applicants, including the Office of Legislative Council for the
18 purpose of rulemaking.

1 Sec. 5. 4 V.S.A. § 602 is amended to read:

2 § 602. DUTIES

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

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

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

20 (c) ~~All~~ Except as provided in subsection (d) of this section, proceedings of
21 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 or Judicial Bureau hearing officer
8 need only have practiced law for five years, but shall have practiced law in
9 Vermont for at least five out of the ten years immediately preceding his or her
10 application to the Board.

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

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

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

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

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

1 (10) Vermont residency. A candidate for Supreme Court Justice, a
2 judge of the Superior Court, magistrate, or Judicial Bureau hearing officer shall
3 be a Vermont resident for at least one year prior to application to the Board. A
4 candidate for Chair or member of the Public Service Board shall not be
5 required to be a Vermont resident.

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

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

10 (1) public and community service;

11 (2) judicial experience in Vermont;

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

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

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

1 Sec. 6. 4 V.S.A. § 603 is amended to read:

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

3 JUDICIAL BUREAU HEARING OFFICERS, PUBLIC SERVICE

4 BOARD CHAIRS, AND MEMBERS

5 Whenever the ~~governor~~ Governor appoints a ~~supreme court justice~~ Supreme
6 Court Justice, a ~~superior judge~~ Superior Court judge, a judge of the
7 Environmental Division of the Superior Court, a magistrate, Judicial Bureau
8 hearing officer, a ~~chair of the public service board~~ Chair of the Public Service
9 Board, or a member of the ~~public service board~~ Public Service Board, he or she
10 shall select from the list of names of qualified persons submitted by the ~~judicial~~
11 ~~nominating board~~ Judicial Nominating Board pursuant to law. The names of
12 candidates submitted and not selected shall remain confidential. If the
13 Governor does not select a candidate from the list of names of qualified
14 candidates submitted by the Board, the Board shall repeat the nomination
15 process in accordance with this chapter. Application during the second or
16 subsequent round of candidate selection for a vacancy shall be limited to
17 persons who did not previously apply for that particular vacancy. The names
18 of qualified candidates previously submitted to the Governor, but not chosen
19 by the Governor, shall be resubmitted to the Governor along with the names of
20 the newly selected candidates.

1 Sec. 7. 4 V.S.A. § 608 is amended to read:

2 § 608. FUNCTIONS

3 (a) Declarations submitted to the ~~general assembly~~ General Assembly by a
4 ~~supreme court justice~~ Supreme Court Justice under subsection 4(c) of this title,
5 by a ~~superior court~~ Superior Court judge under subsection 71(b) of this title, ~~or~~
6 by a magistrate under subsection 461(c) of this title, or a Judicial Bureau
7 hearing officer shall be referred immediately to the ~~joint committee on judicial~~
8 ~~retention~~ Joint Committee on Judicial Retention. The declarations shall be
9 accompanied by a supporting statement by the judge, the ~~justice~~ Justice, or the
10 magistrate seeking retention. In the case of a ~~superior court~~ Superior Court
11 judge or magistrate, the declaration shall also be accompanied by information
12 on the next succeeding rotation schedule for the judge seeking retention.

13 (b) The ~~joint committee~~ Joint Committee responsible for the
14 recommendation of retention shall review the candidacies of those ~~justices,~~
15 ~~superior~~ Justices, Superior judges, and magistrates desiring to succeed
16 themselves. In conducting its review, the ~~committee~~ Committee shall evaluate
17 judicial performance, including ~~but not limited to~~ such factors as integrity,
18 judicial temperament, impartiality, health, diligence, legal knowledge and
19 ability, and administrative and communicative skills.

20 (c) For the purpose of receiving information and hearing testimony, the
21 ~~joint committee~~ Joint Committee responsible for the recommendation of

1 retention shall hold hearings which, if possible, shall not commence until the
2 ~~general assembly~~ General Assembly is in session. Information obtained under
3 subsection 607(c) of this title, shall be confidential until the ~~committee~~
4 Committee commences its hearings under this subsection.

5 (d) A judge, a ~~justice~~ Justice, or a magistrate seeking retention has the right
6 to present oral or written testimony to the ~~committee~~ Committee relative to his
7 or her retention, may be represented by counsel, and may present witnesses to
8 testify in his or her behalf. Copies of written comments received by the
9 ~~committee~~ Committee shall be forwarded to the judge, the ~~justice~~ Justice, or
10 the magistrate. A judge, a ~~justice~~ Justice, or a magistrate seeking retention has
11 the right to a reasonable time period to prepare and present to the ~~committee~~
12 Committee a response to any testimony or written complaint adverse to his or
13 her retention and has the right to be present during any public hearing
14 conducted by the ~~committee~~ Committee.

15 (e) On or before the tenth Thursday after the convening of each biennial
16 and adjourned session, the ~~committee~~ Committee shall report to the ~~general~~
17 ~~assembly~~ General Assembly its recommendation whether the candidates
18 should continue in office, with any amplifying information which it may deem
19 appropriate, in order that the ~~general assembly~~ General Assembly may
20 discharge its obligation under section 34 of Chapter II of the ~~Vermont~~
21 ~~constitution~~ Constitution of the State of Vermont.

1 (f) In the performance of its official functions, the ~~joint committee on~~
2 ~~judicial retention~~ Joint Committee on Judicial Retention may by a majority
3 vote of its membership issue subpoenas to compel the attendance of witnesses
4 to testify under oath and to produce documents.

5 (g) The votes on retention under subsections 4(c), 71(b), and 461(c) of this
6 title shall be conducted in one joint assembly of the ~~general assembly~~ General
7 Assembly, except that in the event that the ~~joint committee~~ Joint Committee
8 reports to the ~~general assembly~~ General Assembly that it is not able to make its
9 recommendation on a particular ~~justice~~ Justice, judge, or magistrate under
10 subsection (b) of this section on or before the date set for such joint assembly,
11 the vote on such individual or individuals shall be deferred to a subsequent
12 joint assembly, and separate ballots shall be used despite any other statutory
13 provisions relating to the votes on retention.

14 Sec. 8. 4 V.S.A. § 1001 is amended to read:

15 § 1001. ENVIRONMENTAL DIVISION

16 * * *

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

21 * * *

1 Sec. 9. 4 V.S.A. § 1104 is amended to read:

2 § 1104. APPOINTMENT OF HEARING OFFICERS

3 ~~(a) The administrative judge shall appoint members of the Vermont bar to~~
4 ~~serve as hearing officers to hear cases. Hearing officers shall be subject to the~~
5 ~~Code of Judicial Conduct~~ There shall be hearing officers who shall hear cases
6 in the Judicial Bureau, whose terms of office shall, except in the case of an
7 appointment to fill a vacancy or unexpired term, begin on April 1 in the year of
8 their appointment or retention, and continue for six years.

9 ~~(b) A hearing officer may file in the Office of Secretary of State, on or~~
10 ~~before September 1 of the year preceding the expiration of the term for which~~
11 ~~he or she was appointed or retained, a declaration that he or she will be a~~
12 ~~candidate for retention. However, a hearing officer appointed and having~~
13 ~~taken the oath of office after September 1 of the year preceding the expiration~~
14 ~~of the term of office shall automatically be a candidate for retention without~~
15 ~~filing notice. When a hearing officer files such a declaration, his or her name~~
16 ~~shall be submitted to the General Assembly for a vote on retention. The~~
17 ~~General Assembly shall vote upon one ballot on the question “Shall the~~
18 ~~following hearing officers be retained in office?” The names of the hearing~~
19 ~~officers shall be listed followed by “Yes ___ No ___.” If a majority of those~~
20 ~~voting on the question vote against retention, upon expiration of the term of~~
21 ~~office a vacancy shall exist which shall be filled by appointment in accordance~~

1 with the Constitution and chapter 15 of this title; if the majority vote is in favor
2 of retention, the hearing officer shall, unless removed for cause, remain in
3 office for another term and, at its end, shall be eligible for retention in office in
4 the manner herein prescribed.

5 (c) The Court Administrator shall notify the Secretary of State whenever a
6 hearing officer is appointed and takes the oath of office after September 1 of
7 the year preceding the expiration of the term of office to which the hearing
8 officer has succeeded, thereby resulting in automatic notification of an
9 intention to continue in office. Whenever a hearing officer files a declaration
10 under subsection (b) of this section or notification occurs automatically, the
11 Secretary of State shall notify the President of the Senate, the Speaker of the
12 House, and the Office of Legislative Council.

13 (d) A hearing officer shall remain in office until a successor is appointed
14 and qualified, unless sooner removed for cause or unless he or she resigns.

15 Sec. 10. EFFECTIVE DATE

16 This act shall take effect on passage.