

H.866

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

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 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.

\* \* \*

(d) The Judicial Nominating Board shall adopt rules under 3 V.S.A. chapter 25 which shall establish criteria and standards for the nomination of ~~qualified~~ candidates for ~~justices~~ Justices of the Supreme ~~court~~, ~~superior Court~~, Superior judges, magistrates, the Chair of the Public Service Board, and members of the Public Service Board. 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~~ Board is authorized to use the staff and services of appropriate ~~state~~ 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.

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

§ 602. DUTIES

(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~~ Chair of the Public Service Board, and members of the ~~public service~~

~~board to the governor~~ Public Service Board, the ~~board~~ Board shall submit to the ~~court administrator~~ Court Administrator of the ~~supreme court~~ Supreme Court a list of all candidates, and the administrator shall disclose to the ~~board~~ Board information solely about professional disciplinary action taken or pending concerning any candidate. If candidates for the Public Service Board are admitted to practice law in Vermont, the Nominating Board shall submit to the Court Administrator a list of those candidates, and he or she shall disclose to the Board information solely about professional disciplinary action taken or pending concerning such candidates.

(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 judge, a magistrate, or the 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~~ Judicial Nominating 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.~~ 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.

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

(d) 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 form; 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.

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

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

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

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

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

(f) A candidate shall possess the following attributes:

(1) Integrity. A candidate shall possess demonstrated 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 a judicial temperament, which includes common sense, compassion, decisiveness, firmness, humility, open-mindedness, tact, and patience.

(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.

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

(1) public and community service;

(2) judicial experience in Vermont;

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

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

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.