

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 866
3 entitled “An act relating to qualifications of judicial officers and judicial
4 selection and retention” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

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

8 § 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

9 * * *

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

12 * * *

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

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(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, including the Office of Legislative Council for the purpose of rulemaking.

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

§ 602. DUTIES

(a) Prior to submission ~~of~~ 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

1 ~~of the Public Service Board~~, and members of the ~~public service board to the~~
2 ~~governor~~ Public Service Board, the ~~board~~ Board shall submit to the ~~court~~
3 ~~administrator~~ Court Administrator of the ~~supreme court~~ Supreme Court a list of
4 all candidates, and the administrator shall disclose to the ~~board~~ Board
5 information solely about professional disciplinary action taken or pending
6 concerning any candidate. If candidates for the Public Service Board are
7 admitted to practice law in Vermont, the Nominating Board shall submit to the
8 Court Administrator a list of those candidates, and he or she shall disclose to
9 the Board information solely about professional disciplinary action taken or
10 pending concerning such candidates. From the list of candidates presented, the
11 ~~judicial nominating board~~ Judicial Nominating Board shall select by majority
12 vote, provided that a quorum is present, ~~qualified~~ well-qualified candidates for
13 the position to be filled.

14 (b) Whenever a vacancy occurs in the office of a ~~supreme court justice or~~
15 Supreme Court Justice, a ~~superior judge~~ Superior judge, a magistrate, and the
16 Chair of the Public Service Board, or when an incumbent does not declare that
17 he or she will be a candidate to succeed himself or herself, the ~~judicial~~
18 ~~nominating board~~ Judicial Nominating Board shall submit to the ~~governor~~
19 Governor the names of as many persons as it deems ~~qualified~~ well-qualified to
20 be appointed to the office. ~~There shall be included in the qualifications for~~
21 ~~appointment that the person shall be an attorney at law who has been engaged~~

1 ~~in the practice of law or a judge in the state of Vermont for a period of at least~~
2 ~~five out of the ten years preceding appointment, and with respect to a candidate~~
3 ~~for superior judge particular consideration shall be given to the nature and~~
4 ~~extent of the candidate's trial practice.~~ In accordance with 30 V.S.A. § 3,
5 whenever a vacancy occurs for a member position on the Public Service Board,
6 the Governor shall submit at least five names of potential nominees to the
7 Judicial Nominating Board for review. The Judicial Nominating Board shall
8 submit to the Governor the names of candidates it deems well-qualified. The
9 Judicial Nominating Board shall submit to the Governor a summary of the
10 qualifications and experience of each candidate whose name is submitted to the
11 Governor, together with any further information relevant to the matter.

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

16 (d) The following shall be public:

17 (1) operating procedures of the Board;

18 (2) standard application forms and any other forms used by the Board,

19 provided they do not contain personal information about a candidate or

20 confidential proceedings;

1 (3) all proceedings of the Board prior to the Board’s receipt of the first
2 candidate’s completed application form; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (1) public and community service;

19 (2) judicial experience in Vermont;

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

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

3 Sec. 3. EFFECTIVE DATE

4 This act shall take effect on passage.

5 and that after passage the title of the bill be amended to read: “An act relating
6 to qualifications of judicial officers and judicial selection”.

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9 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE