

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 91
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 (a) A Judicial Nominating Board is created for the nomination of Supreme
10 Court Justices, Superior judges, magistrates, the Chair of the ~~Public Service~~
11 ~~Board~~, and members of the Public Service Board.

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

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

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

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

20 (4) Attorneys at law admitted to practice before the Supreme Court of
21 Vermont, and residing in the State, shall elect three of their number as

1 members of the Board. The Supreme Court shall regulate the manner of their
2 nomination and election.

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

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

14 (c) Legislative members of the Board shall be entitled to per diem
15 compensation and reimbursement for expenses in accordance with 2 V.S.A.
16 § 406. Members of the Board who are not otherwise compensated by their
17 employer shall be entitled to per diem compensation and reimbursement for
18 expenses in the same manner as board members are compensated under
19 32 V.S.A. § 1010. All compensation and reimbursement shall be paid from the
20 legislative appropriation.

1 (d) The Judicial Nominating Board ~~shall~~ may adopt rules under 3 V.S.A.
2 chapter 25 which shall establish criteria and standards for the nomination of
3 candidates for Justices of the Supreme Court, Superior judges, magistrates, and
4 the Chair of the ~~Public Service Board~~, and members of the Public Service
5 Board based on the attributes identified in subsection 602(f) of this title. ~~The~~
6 ~~criteria and standards shall include such factors as integrity, legal knowledge~~
7 ~~and ability, judicial temperament, impartiality, health, experience, diligence,~~
8 ~~administrative and communicative skills, social consciousness, and public~~
9 ~~service.~~ The application form shall not be included in the rules and may be
10 developed and periodically revised at the discretion of the Board.

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

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

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

20 (h) The following shall be public:

21 (1) operating procedures of the Board;

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

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

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

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

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

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

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

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

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

20 (1) A candidate for judge or Justice shall be a Vermont resident and an
21 experienced lawyer who has practiced law in Vermont for a minimum of ten

1 years, with at least five years immediately preceding his or her application to
2 the Board.

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

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

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

18 (1) Integrity. A candidate shall possess a record and reputation for
19 excellent character and 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 an appropriate
4 judicial temperament.

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

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

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

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

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

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

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

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

2 § 602a. DUTIES; PUBLIC SERVICE BOARD MEMBERS

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

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

1 entity shall disclose to the Board any professional disciplinary action taken or
2 pending concerning the candidate.

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

5 Sec. 4. EFFECTIVE DATE

6 This act shall take effect on passage.

7 and that after passage the title of the bill be amended to read: “An act relating
8 to procedures of the Judicial Nominating Board and qualifications of
9 candidates for the positions of Justice, judge, magistrate, and Chair and
10 member of the Public Service Board”

11

12

13 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE