

1
2
3
4
5
6
7
8
9

10
11
12
13
14
15
16
17
18

H.780

Introduced by Representatives LaLonde of South Burlington and Rachelson of Burlington

Referred to Committee on

Date:

Subject: Judiciary; Judicial Nominating Board; judicial nominations and appointments

Statement of purpose of bill as introduced: This bill proposes to make several modifications to the procedures for judicial nominations and appointments.

An act relating to judicial nominations and appointments

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~~

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

~~(b)(1) The Board shall consist of ~~11~~ 12 members who shall be selected as follows.~~

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

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

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

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

13 ~~(E) The Executive Director of Racial Equity.~~

14 ~~(5)(2) The members of the Board shall serve for terms of two years. All~~
15 appointments or elections shall be between January 1 and February 1 of each
16 odd-numbered year, except to fill a vacancy. A House vacancy that occurs
17 when the General Assembly is adjourned shall be filled by the Speaker of the
18 House and a Senate vacancy that occurs when the General Assembly is
19 adjourned shall be filled by the Senate Committee on Committees. Members
20 shall serve until their successors are elected or appointed. Members shall serve
21 ~~no~~ not more than three consecutive terms in any capacity.

1 ~~(6)(3) The members shall elect their own chair, who will serve for a~~
2 term of two years.

3 * * *

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

5 § 602. DUTIES; JUSTICES, JUDGES, MAGISTRATES, AND THE CHAIR
6 OF THE PUBLIC UTILITY COMMISSION

7 (a)(1) Prior to submitting to the Governor the names of candidates for
8 Justices of the Supreme Court, Superior Court judges, magistrates, and the
9 Chair of the Public Utility Commission, the Judicial Nominating Board shall
10 submit to the Court Administrator a list of all candidates, and ~~he or she~~ the
11 Court Administrator shall disclose to the Board information solely about
12 professional disciplinary action taken or pending concerning any candidate.

13 (2) From the list of candidates, the Judicial Nominating Board shall
14 select by three-fourths majority vote, provided that a quorum is present, well-
15 qualified candidates for the position to be filled.

16 (b)(1) Whenever a vacancy occurs in the office of a Supreme Court Justice,
17 a Superior Court judge, magistrate, or Chair of the Public Utility Commission,
18 or when an incumbent does not declare that ~~he or she~~ the incumbent will be a
19 candidate to succeed ~~himself or herself~~ themselves, the Board shall submit to
20 the Governor the names of as many persons as it deems well qualified to be
21 ~~appointed to the office.~~

1 ~~(2)(A) A person may nominate another person to fill a vacancy in the~~
2 ~~office of a Supreme Court Justice, a Superior Court judge, magistrate, or Chair~~
3 ~~of the Public Utility Commission by submitting a form developed by the Court~~
4 ~~Administrator pursuant to subdivision (B) of this subdivision (2).~~

5 ~~(B) The Court Administrator shall make available on the Judiciary~~
6 ~~website a form that permits a person to nominate another person to fill a~~
7 ~~vacancy in the office of a Supreme Court Justice, a Superior Court judge,~~
8 ~~magistrate, or Chair of the Public Utility Commission. If a person is~~
9 ~~nominated pursuant to this subdivision (2), the Court Administrator shall~~
10 ~~provide the person nominated with information about the application process~~
11 ~~and shall provide the name of the person nominated to the Board.~~

12 ~~(c)(1) A candidate for judge or Justice shall be a Vermont resident and an~~
13 ~~experienced lawyer who has practiced law in Vermont for a minimum of~~
14 ~~ten 10 years, with at least five three years licensed to practice in Vermont~~
15 ~~immediately preceding his or her the candidate's application to the Board. The~~
16 ~~Board may make exceptions to the five-year three-year requirement for~~
17 ~~absences from practice for reasons including family, military, academic, or~~
18 ~~medical leave.~~

19 ~~(2) A candidate for magistrate shall be a Vermont resident and an~~
20 ~~experienced lawyer who has practiced law in Vermont for at least five years,~~

1 ~~with at least three years licensed to practice in Vermont, immediately~~

2 preceding his or her the candidate's application to the Board.

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

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

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

17 (2) Legal knowledge and ability. A candidate shall possess a high
18 degree of knowledge of established legal principles and procedures and have
19 demonstrated a high degree of ability to interpret and apply the law to specific
20 factual situations.

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

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

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

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

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

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

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

18 (10) Legal experience in Vermont. The Board shall consider the
19 candidate's ties to the Vermont legal community, the nature and amount of the
20 candidate's practice in State and federal courts in Vermont, and the candidate's
21 familiarity with the Vermont legal system.

1 ~~(11) Other. A candidate shall possess other attributes the Board deems~~
2 relevant as identified through its rules.

3 Sec. 3. 4 V.S.A. § 603 is amended to read:

4 § 603. APPOINTMENT OF JUSTICES, JUDGES, MAGISTRATES,
5 PUBLIC UTILITY COMMISSION CHAIR, AND MEMBERS

6 Whenever the Governor appoints a Supreme Court Justice, a Superior
7 Judge, a magistrate, the Chair of the Public Utility Commission, or a member
8 of the Public Utility Commission, ~~he or she~~ the Governor shall select from the
9 list of names of ~~qualified~~ well-qualified persons submitted by the Judicial
10 Nominating Board pursuant to law. The names of candidates submitted and
11 not selected shall remain confidential. The Governor shall make the
12 appointment within 60 days after receiving the list from the Board. The
13 Governor shall not refuse to make an appointment from the list or request that
14 the Board submit additional names.

15 Sec. 4. EFFECTIVE DATE

16 ~~This act shall take effect on July 1, 2024.~~

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

§ 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

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

(b)(1) The Board shall consist of ~~H~~ 12 members who shall be selected as follows:

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

(~~2~~)(B) 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~~)(C) 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~~)(D) 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.

(E) The Executive Director of Racial Equity, or designee.

(~~5~~)(2) The members of the Board shall serve for terms of two years. All appointments or elections shall be between January 1 and February 1 of each odd-numbered year, except to fill a vacancy. A House vacancy that occurs when the General Assembly is adjourned shall be filled by the Speaker of the House and a Senate vacancy that occurs when the General Assembly is adjourned shall be filled by the Senate Committee on Committees. Members

shall serve until their successors are elected or appointed. Members shall serve ~~no~~ not more than three consecutive terms in any capacity.

~~(6)~~(3) The members shall elect their own chair, who will serve for a term of two years.

* * *

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

*§ 602. DUTIES; JUSTICES, JUDGES, MAGISTRATES, AND THE CHAIR
OF THE PUBLIC UTILITY COMMISSION*

(a)(1) Prior to submitting to the Governor the names of candidates for Justices of the Supreme Court, Superior Court judges, magistrates, and the Chair of the Public Utility Commission, the Judicial Nominating Board shall submit to the Court Administrator a list of all candidates, and ~~he or she~~ the Court Administrator shall disclose to the Board information solely about professional disciplinary action taken or pending concerning any candidate.

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

(b)(1) Whenever a vacancy occurs in the office of a Supreme Court Justice, a Superior Court judge, magistrate, or Chair of the Public Utility Commission, or when an incumbent does not declare that ~~he or she~~ the incumbent will be a candidate to succeed ~~himself or herself~~ themselves, the Board shall submit to

the Governor the names of as many persons as it deems well qualified to be appointed to the office.

(2)(A) A person may nominate another person to fill a vacancy in the office of a Supreme Court Justice, a Superior Court judge, magistrate, or Chair of the Public Utility Commission by submitting a form developed by the Court Administrator pursuant to subdivision (B) of this subdivision (2).

(B) The Court Administrator shall make available on the Judiciary website a form that permits a person to nominate another person to fill a vacancy in the office of a Supreme Court Justice, a Superior Court judge, magistrate, or Chair of the Public Utility Commission. If a person is nominated pursuant to this subdivision (2), the Court Administrator shall provide the person nominated with information about the application process.

(c)(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~~ 10 years, with at least ~~five~~ three years in Vermont immediately preceding ~~his or her~~ the candidate's application to the Board. The Board may make exceptions to the ~~five-year~~ requirement for absences from practice that the candidate's three years of practice in Vermont be contiguous and immediately preceding the candidate's application for reasons including family, military, academic, or medical leave.

(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, with at least three years in Vermont immediately preceding his or her the candidate's application to the Board. The Board may make exceptions to the requirement that the candidate's three years of practice in Vermont be contiguous and immediately preceding the candidate's application for reasons including family, military, academic, or medical leave.

(3) A candidate for Chair of the Public Utility Commission 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 the Court Administrator 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.

(e) The Board shall consider the candidate's ties to the Vermont legal community and the candidate's familiarity with the Vermont legal system.

(f) The Board shall consider the extent to which a candidate would contribute to a Judicial branch that has diverse backgrounds and a broad range of lived experience.

Sec. 3. 4 V.S.A. § 603 is amended to read:

§ 603. APPOINTMENT OF JUSTICES, JUDGES, MAGISTRATES,

PUBLIC UTILITY COMMISSION CHAIR, AND MEMBERS

(a) Whenever the Governor appoints a Supreme Court Justice, a Superior Judge, a magistrate, the Chair of the Public Utility Commission, or a member of the Public Utility Commission, ~~he or she~~ the Governor shall select from the list of names of ~~qualified~~ well-qualified persons submitted by the Judicial Nominating Board pursuant to law. The names of candidates submitted and not selected shall remain confidential.

(b) Upon request from the Governor, the Judicial Nominating Board shall reopen the search and provide the Governor with an additional list of persons it deems well qualified to be appointed to the office. A request from the Governor for additional names pursuant to this subsection shall not be made more than once.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2024.