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HOUSE BILL NO. 929

Offered January 24, 2000

A BILL to amend and reenact § 16.1-69.9 of the Code of Virginia and to amend the Code of Virginia by adding in Title 17.1 a chapter numbered 9, consisting of sections numbered 17.1-900 through 17.1-912, relating to a Judicial Nominations Commission; local judicial nominations committees; selection and appointment of judges.

Patrons—Deeds, Brink, Clement and Diamonstein

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-69.9 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Title 17.1 a chapter numbered 9, consisting of sections numbered 17.1-900 through 17.1-912 as follows:

§ 16.1-69.9. Judges in office continued; terms of judges; how elected or appointed.

Every judge or justice and every associate, assistant and substitute judge or justice of a court not of record in office January 1, 1973, shall continue in office as a judge or substitute judge of such court under its designation as a general district court or juvenile and domestic relations district court until the expiration of the term for which he was appointed or elected, or until a vacancy shall occur in his office or until a successor shall be appointed or elected, whichever is the latter.

Upon the expiration of such terms, or when a vacancy occurs, successors shall be elected only as authorized pursuant to §§ 16.1-69.10 and 16.1-69.14 and for the term and in the manner following:

~~(a); (a1) [Repealed.]~~

~~(b)1.~~ With respect to terms expiring on or after July 1, 1980, successors to judges shall be elected for a term of six years by the General Assembly as provided in ~~(e) hereof~~ subdivision 2.

Any vacancy in the office of any full-time district court judge shall be filled for a full term of six years in the manner prescribed herein; provided that such vacancy shall not be filled except as provided in § 16.1-69.9:3.

~~(c)2.~~ Full-time district court judges shall be elected by the majority of the members elected to each house of the General Assembly. The judges of the circuit court having jurisdiction over the district shall nominate a panel of no more than three persons for each judgeship within the district who are deemed qualified to hold the office; the General Assembly may consider such nominations in electing a judge to fill the office but may elect a person not on such panel to fill the office. Nominations shall be forwarded to the clerks of both houses of the General Assembly on or before December 15.

If ~~an~~ a *pro tempore* appointment is to be made by two or more judges and there is a tie vote, then the senior judge of the circuit court having jurisdiction in the district shall make the appointment.

CHAPTER 9.

JUDICIAL NOMINATIONS.

§ 17.1-900. Judicial Nominations Commission created.

There is hereby created the Judicial Nominations Commission which shall be selected and have the duties and authority as provided in this chapter.

§ 17.1-901. Composition of Judicial Nominations Commission; number and terms of members; how elected; how chairman elected; staff.

The Judicial Nominations Commission, hereinafter referred to as the Commission, shall be composed of fifteen members who shall be elected by the General Assembly in the same manner as judges are elected. One member shall be elected from each congressional district and the remaining four shall represent the state at large. Five members shall be active members in good standing of the Virginia State Bar and shall have been members of the Virginia State Bar for at least fifteen years each. Ten members shall be citizens of the Commonwealth and shall never have been licensed to practice law in the Commonwealth. No member of the Commission shall be a member of the General Assembly at the time of his election, and membership on the Commission shall be vacated upon taking office as a member of the General Assembly.

Of the initial membership, five members shall be elected for a term of four years; five, for a term of three years; and five, for a term of two years. Thereafter, all members shall be elected for a term of four years. Members may succeed themselves for one additional consecutive term. Vacancies in office shall be filled in the same manner as the original election for the unexpired term. Members elected to fill vacancies may serve two consecutive terms in addition to the unexpired term.

The Commission shall elect a chairman and determine its rules of procedure. The Division of

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60 *Legislative Services shall serve as staff to the Commission.*

61 *§ 17.1-902. Vacancies on courts; how certified; reports of Judicial Council; studies and*
62 *investigations; public hearings; Commission reports to the General Assembly; qualifications;*
63 *confidentiality.*

64 *A. Whenever there is a vacancy on the Supreme Court or the Court of Appeals, the Executive*
65 *Secretary of the Supreme Court shall report the vacancy to the Chairman of the Commission. The report*
66 *shall be submitted within five days of the vacancy or certification of the need to fill a vacancy. The*
67 *expiration of the term of an incumbent justice or judge shall not be considered a vacancy, unless the*
68 *incumbent is not reelected.*

69 *Notwithstanding the provisions of this subsection, whenever it appears that a vacancy on the*
70 *Supreme Court or the Court of Appeals is imminent, the Commission may initiate its studies and*
71 *investigations and shall consider and examine the merits of candidates for nomination, taking into*
72 *consideration the factors set out in subsection C of this section. However, no nominations shall be*
73 *submitted prior to the receipt by the Commission of the report of the Executive Secretary as herein*
74 *provided.*

75 *B. The Commission shall, in determining those persons qualified for appellate judicial office,*
76 *investigate and examine and submit to the Clerks of both houses of the General Assembly and to the*
77 *Chairmen of the Committees for Courts of Justice of each house of the General Assembly for*
78 *consideration by the General Assembly the names of no more than three persons who are qualified on*
79 *the basis of merit to hold such office.*

80 *In the case of pro tempore vacancies to be filled, these submissions shall be made by the*
81 *Commission to the Governor. The Commission shall furnish copies of its reports to the General*
82 *Assembly, to the Clerks of both houses of the General Assembly, and to the Chairmen of the Committees*
83 *for Courts of Justice.*

84 *Submission by the Commission of a person's name to the General Assembly shall not be deemed a*
85 *prerequisite for that person's election by the General Assembly as a judge or justice or to a pro*
86 *tempore appointment by the Governor of a judge or justice.*

87 *C. The Commission shall submit the names of persons it deems qualified on the basis of merit and*
88 *shall examine the character, temperament, intelligence, mental and physical fitness, education, legal*
89 *ability, experience, general interest, and past conduct of each person considered. The Commission shall*
90 *hold at least one public hearing in each congressional district for each vacancy it considers.*

91 *Any person whose name is submitted for consideration for judicial office shall have been licensed to*
92 *practice law for at least five years in the Commonwealth of Virginia. Members of the General Assembly,*
93 *during the term of office for which they were elected, shall not be eligible for consideration as nominees*
94 *for judicial office.*

95 *D. The submission of the name of each person by the Commission to fill a vacancy shall be*
96 *accompanied by a written report. The report shall be concurred in by a majority of the Commission*
97 *members. The report shall contain the method by which the Commission has selected each nominee, and*
98 *his qualifications, as set out in subsection C. If members in a minority of the Commission disagree with*
99 *the majority of the Commission as to the qualifications of any nominee, they may file a dissenting report*
100 *in writing, setting forth their reasons therefor.*

101 *E. Except as provided in this chapter, the reports shall be confidential, until a nominee directs in*
102 *writing to the Chairman of the Commission otherwise, in which case the contents of any report as to*
103 *that nominee may be released to the public.*

104 *§ 17.1-903. Commission papers and proceedings confidential; how made available to Committee.*

105 *Upon the written request of the Chairman of the House or Senate Committee for Courts of Justice,*
106 *the Commission shall divulge all papers filed with the proceedings before the Commission with respect*
107 *to a nominee before that Committee for consideration. Except as provided in subsection E of § 17.1-902,*
108 *all papers and proceedings of the Commission shall be confidential and shall not be divulged to anyone,*
109 *whether such papers or proceedings are in the custody of the Commission or such Committee.*

110 *§ 17.1-904. Expenses and compensation of members.*

111 *Members of the Commission shall receive compensation as provided in § 2.1-20.3 and be reimbursed*
112 *for actual expenses necessary and ordinarily incidental to performing their duties. Compensation and*
113 *reimbursement shall be paid in the manner provided by law from the general fund of the state treasury.*

114 *§ 17.1-905. Civil immunity for members of the Commission.*

115 *Every member of the Commission shall be immune from civil liability for any act, decision, omission,*
116 *or utterance done or made in performance of his duties while serving as such member, provided that*
117 *such act, decision, omission, or utterance is not done or made in bad faith or with malicious intent.*

118 *§ 17.1-906. Local judicial nominations committees; membership.*

119 *There is hereby created a local judicial nominations committee for each judicial circuit. Each*
120 *member of the General Assembly who represents any portion of the circuit shall designate two persons*
121 *who reside within the circuit to sit as members of the local judicial nominations committee for that*

circuit. At least one member shall be appointed from each county and from each city wherein court is held in the circuit. In no case shall the number of licensed attorneys exceed thirty percent of the total membership of the committee. However, if a majority of the members of the General Assembly within the circuit agree that the appointment of two citizens by each member would create a committee of more members than would be practicable, they may, by majority vote, reduce the size to one appointment per member of the General Assembly. Members of a local nominations committee shall serve at the pleasure of the member of the General Assembly by whom they were appointed. Vacancies shall be filled in the same manner as original appointments. A majority of members shall constitute a quorum for the conduct of the business of any committee.

Each committee shall elect a chairman from among its members. Each committee shall determine its rules of procedure not inconsistent with the provisions of this chapter and shall establish procedures for maximizing relevant input from the general public into the process for nomination of judges and ensuring the selection of qualified candidates for the bench.

§ 17.1-907. Duties of local judicial nominations committees; investigation; public hearings; nomination and report.

A. Each local judicial nominations committee shall consider qualified persons to fill anticipated vacancies and new seats in the circuit and district courts within its circuit. A committee may receive advice and recommendations from individuals, bar associations, other organizations, and members of the General Assembly, and may investigate and consider persons on its own initiative. Each committee shall develop a process and criteria by which individuals may submit themselves for consideration by the committee.

The committee shall investigate the merits of persons for nomination to such vacancies and new seats and shall examine the character, temperament, intelligence, mental and physical fitness, education, legal ability, experience, general interest, and past conduct of each person considered. The committee shall hold at least one public hearing in each county and city wherein court is held in the circuit. Any person who is nominated by a local committee shall have been licensed to practice law in this Commonwealth for at least five years. Members of the General Assembly, during the term of office for which they were elected, shall not be eligible for consideration as nominees for judicial office.

B. In the case of a vacancy or new judgeship in a circuit or district court, the committee shall, by a majority vote of the members present and voting, nominate up to three persons it deems qualified for that seat on the basis of merit. If the committee nominates more than one person for a particular judgeship, it shall indicate in the written report required by subsection C which person it finds to be the most qualified for the judgeship. The committee shall submit nominations to the clerks of both houses of the General Assembly for consideration by the General Assembly. In the case of vacancies which may be filled by pro tempore appointment pursuant to §§ 16.1-69.9:2 and 17.1-509, nominations shall be made by the committee to the appropriate appointing authority.

C. The submission of a nomination to fill a vacancy or new judgeship shall be accompanied by a written report. The report shall be concurred in by a majority of the committee members. The report shall include an explanation of the method by which the committee has selected each nominee, and his qualifications, as set out in subsection A. If a minority of the members of a committee disagree with the majority of the committee as to the qualifications of any nominee, they may file a dissenting report in writing setting forth their reasons therefor, but no other nomination may be submitted unless the General Assembly fails to elect one of the nominees of the committee.

D. Submission by a local committee of the name of a person to the General Assembly or appointing authority shall not be deemed a prerequisite for that person's election or appointment as a judge.

§ 17.1-908. How vacancies certified; reports of Judicial Council and Committee on District Courts; studies and investigations.

Whenever the Supreme Court certifies that there is a need to fill a vacancy in the office of judge of a circuit court or the Committee on District Courts certifies that there is a need to fill a vacancy in the office of judge of any district court, the Executive Secretary of the Supreme Court shall report the vacancy to the chairman of the appropriate local judicial nominations committee. The report shall be submitted within five days of the vacancy or certification of the need to fill a vacancy. The expiration of the term of an incumbent judge shall not be considered a vacancy, unless the incumbent judge is not reelected.

Upon the filing by the Committee on District Courts of the report required by § 16.1-69.10 as to the need for additional district court judges, and upon the filing by the Judicial Council of the recommendations required by § 17.1-507 as to the need for additional circuit court judges, the Executive Secretary shall forward a copy of such report to the chairman of the local committee in the appropriate circuit or district.

Notwithstanding the provisions of this section, whenever it appears that a vacancy in a circuit or district court is imminent, the appropriate local committee may initiate its studies and investigations.

183 *However, no nominations shall be submitted prior to receipt by the committee of the report of the*
184 *Executive Secretary as herein provided.*

185 *§ 17.1-909. Committee papers made available to the Committees for Courts of Justice;*
186 *confidentiality.*

187 *Upon the written request of the Chairman of the House or Senate Committee for Courts of Justice, a*
188 *local committee shall divulge all papers filed with and proceedings before the committee with respect to*
189 *a nominee before the General Assembly for consideration for election to any judicial office.*

190 *§ 17.1-910. Expenses of members.*

191 *Members of local judicial nominations committee shall be reimbursed for reasonable expenses*
192 *necessary to performing their duties and shall be paid in the manner provided by law from the general*
193 *fund of the state treasury.*

194 *§ 17.1-911. Civil immunity for members of local judicial nominations committees.*

195 *Every member of a local judicial nominations committee shall be immune from civil liability for any*
196 *act, decision, omission, or utterance done or made in the performance of his duties while serving as a*
197 *member of such committee, provided that such act, decision, omission, or utterance is not done or made*
198 *in bad faith or with malicious intent.*

199 *§ 17.1-912. Exception to chapter; alternate processes.*

200 *The provisions of this chapter shall not apply to any circuit wherein the members of the General*
201 *Assembly who represent a portion of such circuit, hereinafter referred to as the "delegation," certify in*
202 *writing to the clerk of their respective houses that an alternate process for judicial nomination has been*
203 *developed within that delegation that ensures participation of each delegation member and participation*
204 *by the general public in the nomination process. The most senior member of the delegation within each*
205 *house shall submit to the clerk, with the certification, a detailed summary of the delegation's alternate*
206 *process. The clerk shall send a copy of such certification and summary to the Chairmen of the*
207 *Committee for Courts of Justice of his or her house.*