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## SENATE BILL NO. 341

Offered January 19, 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 creation of the Judicial Nominations Commission and local judicial nominations committees; selection and appointment of judges.*

Patrons—Bolling; Delegate: Clement

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(a); (a1) ~~[Repealed.]~~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 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 appointed; how chairman elected; staff.

The Judicial Nominations Commission, referred to in this chapter as the Commission, shall be composed of fifteen members who shall be appointed as follows: five members who may or may not be members of the Virginia State Bar shall be appointed by the Speaker of the House of Delegates; five members who may or may not be members of the Virginia State Bar shall be appointed by the Senate Committee on Privileges and Elections; and five members who may or may not be members of the Virginia State Bar shall be appointed by the Governor. No member of the Commission shall be a member of the General Assembly at the time of his appointment, and membership on the Commission shall be vacated upon taking office as a member of the General Assembly.

Of the initial membership, three members shall be appointed by the Speaker for a term of four years and two for a term of three years, three members shall be appointed by the Senate Committee on Privileges and Elections for a term of four years and two for a term of three years, and the five members appointed by the Governor shall be for a term of two years. Thereafter, all appointments shall be for terms of four years. Initial members may succeed themselves for one additional consecutive term. Vacancies in office shall be filled in the same manner as the original appointment for the unexpired term. Members appointed to fill vacancies may serve two consecutive terms in addition to the unexpired

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60 term.

61 The Commission shall elect a chairman and determine its rules of procedure. The Division of  
62 Legislative Services shall serve as staff to the Commission.

63 § 17.1-902. Vacancies on courts; how certified; reports of Judicial Council and Committee on  
64 District Courts; studies and investigations; Commission reports to the General Assembly; qualifications;  
65 confidentiality.

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

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

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

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

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

88 C. The Commission shall submit the names of persons it deems qualified on the basis of merit and  
89 shall examine the character, temperament, intelligence, mental and physical fitness, education, legal  
90 ability, experience, general interest, and past conduct of each person considered.

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 include an explanation of the method by which the Commission has selected  
98 each nominee, and his qualifications, as set out in subsection C. Members of the Commission who  
99 disagree with the majority of the Commission as to the qualifications of any nominee may file a  
100 dissenting report in writing, setting forth their reasons therefor.

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

104 § 17.1-903. Commission papers and proceedings made available to the Committees for Courts of  
105 Justice; confidentiality.

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

111 § 17.1-904. Expenses and compensation of members.

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

115 § 17.1-905. Civil immunity for members of the Commission.

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

119 § 17.1-906. Local judicial nominations committees; membership.

120 There is hereby created a local judicial nominations committee for each judicial circuit. Each  
121 member of the General Assembly who represents any portion of a circuit shall designate two persons

who reside within such circuit, one of whom shall be an attorney licensed to practice law in the Commonwealth and one of whom shall never have been licensed to practice law in the Commonwealth, to sit as members of the local judicial nominations committee for that circuit. 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. In such case, the committee member appointed by each member of the General Assembly may be an attorney or not, in the discretion of the member making such appointment. Members of a local judicial nominations committee shall serve at the pleasure of the member of the General Assembly who appointed them. 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; 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. 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 that 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. Members of a committee who disagree with the majority of the committee as to the qualifications of any nominee 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.

A. 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 the proceedings before the committee with*  
189 *respect to 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 committees 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 which ensures the participation of each delegation member in the*  
204 *nomination process. The senior member of the delegation within each house shall submit to the clerk*  
205 *with the certification a detailed summary of the delegation's alternate process. The clerk shall send a*  
206 *copy of such certification and summary to the Chairman of the Committee for Courts of Justice of his*  
207 *or her house.*