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HOUSE BILL NO. 2227

Offered January 23, 1995

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 2.1 a chapter numbered 4.2, consisting of sections numbered 2.1-37.19 through 2.1-37.25, creating the Judicial Nominations Commission and relating to procedures for the selection and appointment of judges.

Patron—Grayson

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 2.1 a chapter numbered 4.2, consisting of sections numbered 2.1-37.19 through 2.1-37.25, as follows:

CHAPTER 4.2.

JUDICIAL NOMINATIONS COMMISSION.

§ 2.1-37.19. 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.

§ 2.1-37.20. Composition of Commission; number and terms of members; how elected; how chairman elected; staff.

A. The members of the Judicial Nominations Commission, hereinafter referred to as the Commission, shall be elected by the General Assembly in the same manner as members of the judiciary are elected. The Commission shall be composed of twelve members as follows:

Seven attorneys who shall be active members in good standing of the Virginia State Bar, each of whom shall be a member of at least one of the following associations: the Virginia State Bar, the Virginia Bar Association, the Virginia Trial Lawyers Association, the Virginia Women Attorneys Association, the Old Dominion Bar Association, the Commonwealth's Attorneys Association, and the Virginia Association of Defense Attorneys; and

Five citizen members, each of whom shall be a member of at least one of the following organizations or associations: the League of Women Voters, a local Chamber of Commerce, the National Association for the Advancement of Colored People, a local chapter of the Rotary Club, and a parent-teacher association.

The citizen members appointed hereunder shall not be members of the Virginia State Bar and shall never have been admitted to practice law in the Commonwealth or in any other state. 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.

B. Of the initial membership, three members shall be elected for terms of four years, four for terms of three years and five for terms of two years. Thereafter, members shall be appointed for terms of four years. Members may succeed themselves for one additional consecutive term. Vacancies in office shall be filled for the unexpired term. Members appointed to fill vacancies may serve two consecutive terms in addition to the unexpired term.

C. The Commission shall elect a chairman from among its members and shall determine its rules of procedure. The Division of Legislative Services shall provide staff to the Commission.

§ 2.1-37.21. Investigation of candidates.

The Commission shall investigate the merits of all candidates for nomination for judicial vacancies, taking into consideration the factors set out in subsection C of § 2.1-37.22. The Commission may receive advice and recommendations from individuals, bar associations, and other associations and may investigate and consider persons on its own initiative.

§ 2.1-37.22. Vacancies on courts; how certified; reports of Judicial Council and Committee on District Courts; studies and investigations; Commission reports to the General Assembly; qualifications; confidentiality.

A. 1. Whenever (i) there is a vacancy on the Supreme Court or the Court of Appeals, (ii) the Supreme Court certifies there is a need to fill a vacancy in the office of judge of any circuit court, or (iii) the Committee on District Courts certifies 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 Commission. 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 justice or judge

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shall not be considered a vacancy, unless the incumbent is not reelected.

2. 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 § 17-119.1:2 as to the need for additional circuit court judges, the Executive Secretary of the Supreme Court shall forward a copy of such reports to the Chairman of the Commission. The Chairman may initiate necessary studies and investigations. Nominations may be submitted prior to the creation of a new judgeship by the General Assembly.

3. Notwithstanding the provisions of this subsection, whenever it appears that a judicial vacancy is imminent, the Commission may initiate its studies and investigations; shall consider and examine the merits of candidates for nomination; and shall make nominations of judicial candidates taking into consideration the factors set out in subsection C of this section. However, no nominations shall be submitted prior to the receipt by the Commission of the report of the Executive Secretary as herein provided.

B. In determining those persons qualified for judicial office, the Commission shall investigate and examine, and submit to the clerks of both houses of the General Assembly and to the chairmen of the Committees for Courts of Justice of each house of the General Assembly for consideration by the General Assembly, the names of persons who are found to be qualified on the basis of merit to hold such office. In the case of pro tempore vacancies to be filled pursuant to §§ 16.1-69.9:2 and 17-120, these submissions shall also be made by the Commission to the appropriate appointing authority.

C. 1. The Commission shall submit the names of persons it finds to be qualified on the basis of merit and shall examine the character, temperament, intelligence, mental and physical fitness, education, legal ability, experience, general interest, and past conduct of each person considered.

2. Any person whose name is submitted for consideration for judicial office shall have been licensed to practice law for at least five years in the Commonwealth of Virginia. 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.

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

E. The reports shall be confidential until a nominee, in writing, otherwise directs the Chairman of the Commission, in which case the contents of any report as to that nominee may be released to the public.

§ 2.1-37.23. How Commission papers made available to Committees for Courts of Justice; confidentiality.

Upon the written request of the chairman of the House or Senate Committee for Courts of Justice, the Commission shall divulge all papers filed with and proceedings before the Commission with respect to a nominee before that Committee for consideration. Except as provided in subsection E of § 2.1-37.22, all papers and proceedings of the Commission shall be confidential and shall not be divulged to anyone whether such papers or proceedings are in the custody of the Commission or such Committee.

§ 2.1-37.24. Expenses and compensation of members.

Members of the Commission shall receive compensation as provided in § 14.1-18 for members of the General Assembly and be reimbursed for actual expenses necessary and ordinarily incidental to performing their duties. Compensation and reimbursement shall be paid in the manner provided by law from the general fund of the state treasury.

§ 2.1-37.25. Civil immunity for members of the Commission.

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

§ 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;

(e) 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.