

LD3911837

**SENATE BILL NO. 70**

Offered January 14, 1994

*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.*

Patrons—Holland, E.M., Andrews, Barry, Benedetti, Calhoun, Cross, Holland, C.A., Quayle, Schewel, Stolle, Stosch, Trumbo, Walker and Woods

Referred to the 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; definition.*

*There are hereby created the Judicial Nominations Commission, a circuit judicial nominations committee for each judicial circuit and a district judicial nominations committee for District Two-A, which shall be selected and have the duties and authority as provided in this chapter.*

*As used in this chapter, the term "circuit judicial nominations committee" includes the district judicial nominations committee for District Two-A.*

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

*The Judicial Nominations Commission, hereinafter referred to as the Commission, shall be composed of fifteen members who shall be elected as follows: One member who shall be an active member of the Virginia State Bar and a resident of the congressional district shall be elected by the General Assembly from each congressional district. Four members who shall not be members of the Virginia State Bar shall be elected by the General Assembly from the Commonwealth at large. The election of members shall be by majority vote of the members elected to each house of the General Assembly. 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, 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 by the General Assembly 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 Legislative Services shall serve as staff to the Commission.*

*§ 2.1-37.21. Duties of circuit judicial nominations committees; district judicial nominations committee for District Two-A; appointments.*

*The circuit judicial nominations committees for each judicial circuit of the Commonwealth shall assist and serve with the Commission in making nominations for circuit and district court judgeships as provided in subsection D of § 2.1-37.22. The district judicial nominations committee for District Two-A shall assist the Commission in making nominations for district court judgeships in that district.*

*The Commission shall appoint, subject to confirmation by each house of the General Assembly, a circuit judicial nominations committee consisting of lay persons and active members of the Virginia State Bar who reside in or practice law in the circuit or district in which a vacancy in a judicial office exists or is about to exist. The committees shall be composed of nine members, three of whom shall be lay persons and six of whom shall be active members of the Virginia State Bar. No member shall be a member of the General Assembly. Members of the committees shall serve without pay, except when sitting as a part of the Commission. Of the initial membership, three members shall be appointed for a term of four years, three for a term of three years and three for a term of two years. Thereafter, members shall be appointed for a term of four years. Members may succeed themselves for one additional consecutive term. Vacancies in office shall be filled by the Commission for the unexpired term. Members appointed to fill vacancies may serve two consecutive terms in addition to the unexpired term.*

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60 Each committee shall investigate the merits of candidates for nomination for vacancies on a circuit  
61 or district court in the committee's circuit or district, taking into consideration the factors set out in  
62 subsection C of § 2.1-37.22. A committee may receive advice and recommendations from individuals, bar  
63 associations, and other associations and may investigate and consider persons on its own initiative. The  
64 committee shall report its findings and recommendations to the Commission.

65 Members of the committee shall serve and vote as members of the Commission when the Commission  
66 makes and reports upon its deliberation for vacancies within the committee's jurisdiction.

67 § 2.1-37.22. Vacancies on courts; how certified; reports of Judicial Council and Committee on  
68 District Courts; studies and investigations; Commission reports to the General Assembly; qualifications;  
69 confidentiality.

70 A. Whenever (i) there is a vacancy on the Supreme Court or the Court of Appeals, (ii) the Supreme  
71 Court certifies there is a need to fill a vacancy in the office of judge of any circuit court, or (iii) the  
72 Committee on District Courts certifies there is a need to fill a vacancy in the office of judge of any  
73 district court, the Executive Secretary of the Supreme Court shall report the vacancy to the Chairman of  
74 the Commission. The report shall be submitted within five days of the vacancy or certification of the  
75 need to fill a vacancy. The expiration of the term of an incumbent justice or judge shall not be  
76 considered a vacancy, unless the incumbent is not reelected.

77 Upon the filing by the Committee on District Courts of the report required by § 16.1-69.10 as to the  
78 need for additional district court judges, and upon the filing by the Judicial Council of the  
79 recommendations required by § 17-119.1:2 as to the need for additional circuit court judges, the  
80 Executive Secretary of the Supreme Court shall forward a copy of such reports to the Chairman of the  
81 Commission. The Chairman may initiate necessary studies and investigations. No nomination shall be  
82 submitted prior to the creation of a new judgeship by the General Assembly.

83 Notwithstanding the provisions of this subsection, whenever it appears that a vacancy on the  
84 Supreme Court or the Court of Appeals is imminent, the Commission may initiate its studies and  
85 investigations and shall consider and examine the merits of candidates for nomination, taking into  
86 consideration the factors set out in subsection C of this section. Likewise, whenever it appears that a  
87 vacancy on a circuit or district court is imminent, the Commission shall request that the appropriate  
88 circuit judicial nominations committee initiate its studies and investigations. However, no nominations  
89 shall be submitted prior to the receipt by the Commission of the report of the Executive Secretary as  
90 herein provided.

91 B. In determining those persons qualified for judicial office the Commission shall investigate and  
92 examine, and submit to the Clerks of both houses of the General Assembly and to the Chairmen of the  
93 Committees for Courts of Justice of each house of the General Assembly for consideration by the  
94 General Assembly, the names of no more than three persons who are qualified on the basis of merit to  
95 hold such office. In the case of pro tempore vacancies to be filled pursuant to §§ 16.1-69.9:2 and  
96 17-120, these submissions shall also be made by the Commission to the appropriate appointing  
97 authority.

98 Submission by the Commission of the name of a person to the General Assembly shall not be deemed  
99 a prerequisite for that person's election by the General Assembly as a judge or justice or to an  
100 appointment by the Governor of a judge or justice or for that person's pro tempore appointment by the  
101 appropriate appointing authority.

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

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

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

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

119 § 2.1-37.23. How Commission papers made available to Committees for Courts of Justice;  
120 confidentiality.

121 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, including members of a circuit judicial nominations committee while sitting as a part of the Commission during the Commission's deliberations respecting a vacancy in their circuit or district, 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 and circuit judicial nominations committees.

Every member of the Commission and each circuit judicial nominations committee 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 (c) 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.