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## HOUSE BILL NO. 467

Offered January 18, 1996

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 2.1-37.24, relating to the creation of the Judicial Nominations Commission and procedures for the selection and appointment of judges.

Patrons—Davies, Grayson, McDonnell, Mims and Plum; Senator: Houck

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 2.1-37.24 as follows:

## CHAPTER 4.2.

## JUDICIAL NOMINATIONS COMMISSION.

§ 2.1-37.19. Commission created; definition.

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 Judicial Nominations Commission, hereinafter referred to as the Commission, shall be composed of members who shall be appointed as follows: three members by each house of the General Assembly, three members by the Governor and three members by the Supreme Court. Of each group of three, two shall be active members of the Virginia State Bar, and one shall be a nonlawyer citizen of the Commonwealth. The appointment of the General Assembly-appointed members shall be by majority vote of the members elected to each house of the General Assembly, and membership on the Commission shall be vacated upon taking office as a member of the General Assembly.

B. Of the initial three members appointed by each appointing body, one member shall be appointed for a term of four years, one for a term of three years, and one 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 appointing body for the unexpired term. Members elected to fill vacancies may serve two consecutive terms in addition to the unexpired term.

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

§ 2.1-37.21. 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 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 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. No nomination shall 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 vacancy on the Supreme Court or the Court of Appeals is imminent, the Commission may initiate its studies and investigations and shall consider and examine the merits of candidates for nomination, 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.1. In determining those person qualified for judicial office the Commission shall investigate and

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60 examine, and submit to the clerks of both houses of the General Assembly and to the chairmen of the  
61 Committees for Courts of Justice of each house of the General Assembly for consideration by the  
62 General Assembly, the names of no more than three persons who are qualified on the basis of merit to  
63 hold such office. In the case of pro tempore vacancies to be filled pursuant to §§ 16.1-69.9:2 and  
64 17-120, these submissions shall also be made by the Commission to the appropriate appointing  
65 authority.

66 2. Submission by the Commission of the name of a person to the General Assembly shall not be  
67 deemed a prerequisite for that person's election by the General Assembly as a judge or justice or to an  
68 appointment by the Governor or judge or justice or for that person's prop tempore appointment by the  
69 appropriate appointing authority.

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

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

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

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

85 § 2.1-37.22. How Commission papers made available to Committees for Courts of Justice;  
86 confidentiality.

87 Upon the written request of the chairman of the House or Senate Committee for Courts of Justice,  
88 the Commission shall divulge all papers filed with and proceedings before the Commission with respect  
89 to a nominee before that Committee for consideration. Except as provided in subsection E of  
90 § 2.1-37.21, all papers and proceedings of the Commission shall be confidential and shall not be  
91 divulged to anyone whether such papers or proceedings are in the custody of the Commission or such  
92 Committee.

93 § 2.1-37.23. Expenses and compensation of members.

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

98 § 2.1-37.24. Civil immunity for members of the Commission.

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

102 § 16.1-69.9. Judges in office continued; terms of judges; how elected or appointed.

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

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

110 (a), (a1) [Repealed.]

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

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

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

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

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