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HOUSE BILL NO. 456

Offered January 17, 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, creating the Judicial Nominations Commission and relating to procedures for the selection and appointment of judges.

Patrons—Clement, Abbitt, Barlow, Bennett, Brickley, Cantor, Cooper, Council, Croshaw, Diamonstein, Forbes, Guest, Hall, Howell, Johnson, McDonnell, Mims, Moore, Plum, Putney, Reynolds, Shuler and Van Yahres

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.

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 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.

B. 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.

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 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. 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

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60 investigations and shall consider and examine the merits of candidates for nomination, taking into
61 consideration the factors set out in subsection C of this section. Likewise, whenever it appears that a
62 vacancy on a circuit or district court is imminent, the Commission shall request that the appropriate
63 circuit judicial nominations committee initiate its studies and investigations. However, no nominations
64 shall be submitted prior to the receipt by the Commission of the report of the Executive Secretary as
65 herein provided.

66 B. 1. In determining those persons qualified for judicial office the Commission shall investigate and
67 examine, and submit to the Clerks of both houses of the General Assembly and to the chairmen of the
68 Committees for Courts of Justice of each house of the General Assembly for consideration by the
69 General Assembly, the names of no more than three persons who are qualified on the basis of merit to
70 hold such office. In the case of pro tempore vacancies to be filled pursuant to §§ 16.1-69.9:2 and
71 17-120, these submissions shall also be made by the Commission to the appropriate appointing
72 authority.

73 2. Submission by the Commission of the name of a person to the General Assembly shall not be
74 deemed a prerequisite for that person's election by the General Assembly as a judge or justice or to an
75 appointment by the Governor of a judge or justice or for that person's pro tempore appointment by the
76 appropriate appointing authority.

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

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

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

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

92 § 2.1-37.22. How Commission papers made available to Committees for Courts of Justice;
93 confidentiality.

94 Upon the written request of the chairman of the House or Senate Committee for Courts of Justice,
95 the Commission shall divulge all papers filed with and proceedings before the Commission with respect
96 to a nominee before that Committee for consideration. Except as provided in subsection E of
97 § 2.1-37.22, all papers and proceedings of the Commission shall be confidential and shall not be
98 divulged to anyone whether such papers or proceedings are in the custody of the Commission or such
99 Committee.

100 § 2.1-37.23. Expenses and compensation of members.

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

105 § 2.1-37.24. Civil immunity for members of the Commission.

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

109 § 16.1-69.9. Judges in office continued; terms of judges; how elected or appointed.

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

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

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

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

120 Any vacancy in the office of any full-time district court judge shall be filled for a full term of six
121 years in the manner prescribed herein; provided that such vacancy shall not be filled except as provided

122 in § 16.1-69.9:3;

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

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