

2010 -- H 7088

LC00109

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE--COURTS -- JUDICIAL SELECTION

Introduced By: Representative Scott M. Pollard

Date Introduced: January 12, 2010

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 8-16.1-6 of the General Laws in Chapter 8-16.1 entitled "Judicial
2 Selection" is hereby amended to read as follows:

3 ~~8-16.1-6. **Nomination and appointment of judges.** [Repealed effective June 30, 2009.]~~

4 **Nomination and appointment of judges.** [Repealed effective June 30, 2010.] -- (a) (1) The
5 governor shall immediately notify the commission of any vacancy or prospective vacancy of a
6 judge of any state court other than the Rhode Island supreme court. The commission shall
7 advertise for each vacancy and solicit prospective candidates and shall consider names submitted
8 from any source. Within ninety (90) days of any vacancy the commission shall publicly submit
9 the names of not less than three (3) and not more than five (5) highly qualified persons for each
10 vacancy to the governor.

11 (2) Notwithstanding any other law to the contrary, any individual whose name was
12 publicly submitted to the governor by the commission as described in subsection (1) above, shall
13 also be eligible for subsequent nomination by the governor for any vacancy or prospective
14 vacancy of a judge in the same court for which that particular individual had previously applied
15 except for a vacancy in the position of presiding justice, chief justice, or chief judge.

16 (3) Such individuals shall remain eligible for nomination to fill any vacancy or
17 prospective vacancy within the same court to which they previously applied for a period of five
18 (5) years from the date their name or names were publicly submitted to the governor by the
19 commission unless such individuals withdraw from future consideration in writing to the judicial

1 nominating commission. However, such individuals must reapply for any subsequent vacancy or
2 prospective vacancy in the same court for the position of presiding justice, chief justice, or chief
3 judge.

4 (4) Subject to the eligibility requirements set forth above, the governor shall fill any
5 vacancy of any judge of the Rhode Island superior court, family court, district court, workers'
6 compensation court, or any other state court which the general assembly may from time to time
7 establish, by nominating one of the three (3) to five (5) highly qualified persons forwarded to him
8 or her by the commission for the court where the vacancy occurs, or by nominating another
9 individual who has previously applied for a vacancy or prospective vacancy within the same court
10 and whose name had been previously publicly submitted to the governor within the previous five
11 (5) years.

12 (b) The governor shall fill any vacancy within twenty-one (21) days of the public
13 submission by the commission. Notwithstanding any provisions of the general or public laws to
14 the contrary, in the event that the governor fails to fill the vacancy within twenty-one (21) days
15 after candidates have been submitted by the commission, the governor's power of appointment
16 shall terminate and said power shall be vested in the grand committee of the general assembly.
17 The grand committee shall have six (6) months following the governor's twenty-one (21) day
18 period to make said appointment. Those eligible for appointment by the grand committee shall be
19 those individuals who are eligible pursuant to this section. In the event that more than one
20 individual is nominated for appointment by the grand committee, the individual who receives the
21 most votes shall be appointed.

22 Upon the appointment of said individual, the advise and consent of the senate shall be
23 required in accordance with the provisions of this section.

24 (c) Each nomination shall be delivered forthwith to the secretary of the senate for
25 presentation to the senate, and by and with the advice and consent of the senate, each nominee
26 shall be appointed by the governor to serve subject to the general laws. The senate shall, after
27 seven (7) calendar days of receipt of the nomination consider the nomination, but if the senate
28 fails within ~~sixty (60)~~ ninety (90) days after the submission to confirm the nominee or if the
29 senate does not by a majority vote of its members extend the deliberation an additional seven (7)
30 calendar days, the governor shall appoint some other person to fill the vacancy and shall submit
31 his or her appointment to the senate for confirmation in like manner until the senate shall confirm
32 the nomination. If the nominee is rejected by the senate, the commission shall submit a new list of
33 three (3) to five (5) candidates to the governor for the purpose of nomination in accordance with
34 this chapter. Any new list may include but need not be limited to the names of any candidates

1 who were previously submitted to the governor by the commission but who were not forwarded
2 to the senate for its advice and consent.

3 (d) During the time for consideration of the nominees by the senate, the senate judiciary
4 committee shall conduct an investigation and public hearing on the question of the qualifications
5 of the nominee or nominees. At the public hearing, the testimony of every witness shall be taken
6 under oath and stenographic records shall be taken and maintained. Further, the senate judiciary
7 committee shall during the course of its investigation and hearing have the power upon majority
8 vote of the committee members present to issue witness subpoenas, subpoenas duces tecum, and
9 orders for the production of books, accounts, papers, records, and documents which shall be
10 signed and issued by the chairperson of the committee, or the person serving in his or her
11 capacity. All such subpoenas and orders shall be served as subpoenas in civil cases in the superior
12 court are served, and witnesses so subpoenaed shall be entitled to the same fees for attendance
13 and travel as provided for witnesses in civil cases in the superior court. If the person subpoenaed
14 to attend before the committee fails to obey the command of the subpoena without reasonable
15 cause, refuse to be sworn, or to be examined, or to answer a legal and pertinent question, or if any
16 person shall refuse to produce books, accounts, papers, records, and documents material to the
17 issue, set forth in an order duly served on him or her, the committee by majority vote of the
18 committee members present may apply to any justice of the superior court, for any county, upon
19 proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than
20 five (5) days, directing the person to show cause before the justice who made the order or any
21 other justice of the superior court, why he or she should not be adjudged in contempt. Upon the
22 return of the order, the justice before whom the matter is brought on for hearing shall examine
23 under oath the person, and the person shall be given an opportunity to be heard, and if the justice
24 shall determine that the person has refused without reasonable cause or legal excuse to be
25 examined or to answer a legal and pertinent question, or to produce books, accounts, papers,
26 records, and documents material to the issue which he or she was ordered to bring or produce, he
27 or she may forthwith commit the offender to the adult correctional institution, there to remain
28 until the person submits to do the act which he or she was so required to do, or is discharged
29 according to law.

30 (e) The committee shall, for the purpose of investigating the qualifications of the
31 nominee or nominees, be furnished with a report compiled by the state police in conjunction with
32 the attorney general's office indicating the determinations and findings of the state police and
33 attorney general's office investigations concerning the background of the nominee or nominees,
34 and the report shall include, but not be limited to, the following:

1 (1) Whether the nominee has ever been convicted of or pleaded guilty to a misdemeanor
2 or felony in this or any other state or foreign country;

3 (2) Whether the nominee has ever filed a personal bankruptcy petition or an assignment
4 for the benefit of creditors in this or any other state or foreign country; and whether the nominee
5 has ever been a partner in, held ten percent (10%) or more of stock in, or held office in any sole
6 proprietorship, partnership, or corporation that has been involved in bankruptcy or receivership
7 actions as a debtor or because of insolvency at the time the nominee was a partner in, held ten
8 percent (10%) or more stock in, or held office in any such sole proprietorship, partnership, or
9 corporation;

10 (3) Whether the nominee has ever had a civil judgment rendered against him or her
11 arising out of an allegation of fraud, misrepresentation, libel, slander, professional negligence, or
12 any intentional tort in this state or any other state or foreign country;

13 (4) The state police in conjunction with the attorney general's department shall provide
14 in their report the names and addresses of each and every source of their information.

15 (f) The reports set forth in this section shall be delivered to the chairperson and members
16 of the senate judiciary committee in addition to the nominee or nominees only prior to the
17 commencement of the public hearing. Provided, however, that if the nominee or nominees
18 withdraw or decline the appointment prior to the public hearing then the report or reports shall be
19 returned to the chairperson of the judiciary committee and destroyed.

20 (g) The committee shall also require a financial statement to be submitted by each
21 nominee, prior to the public hearing, to the chairperson of the senate judiciary committee, to
22 investigate each nominee to determine his or her compliance with the provisions of chapter 14 of
23 title 36.

24 (h) Any associate justice of any state court who is appointed to serve as the chief or
25 presiding justice of that court on an interim basis shall retain his or her status as an associate
26 justice until the appointment to chief or presiding justice is made permanent.

27 (i) In case a vacancy shall occur when the senate is not in session, the governor shall
28 appoint some person from a list of three (3) to five (5) persons submitted to the governor by the
29 commission to fill the vacancy until the senate shall next convene, when the governor shall make
30 an appointment as provided in this section.

31 ~~8-16.1-6. Nomination and appointment of judges. [Effective June 30, 2009.]~~

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33 immediately notify the commission of any vacancy or prospective vacancy of a judge of any state
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6 general assembly may from time to time establish, by nominating one of the three (3) to five (5)
7 highly qualified persons forwarded to him or her by the commission for the court where the
8 vacancy occurs.

9 (b) The governor shall fill any vacancy within twenty-one (21) days of the public
10 submission by the commission. Notwithstanding any provisions of the general or public laws to
11 the contrary, in the event that the governor fails to fill the vacancy within twenty-one (21) days
12 after candidates have been submitted by the commission, the governor's power of appointment
13 shall terminate and said power shall be vested in the grand committee of the general assembly.
14 The grand committee shall have six (6) months following the governor's twenty-one (21) day
15 period to make said appointment. Those eligible for appointment by the grand committee shall be
16 those individuals who are eligible pursuant to this section. In the event that more than one
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18 most votes shall be appointed.

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20 required in accordance with the provisions of this section.

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23 subject to the general laws. The senate shall, after seven (7) calendar days of receipt of the
24 nomination consider the nomination, but if the senate fails within ~~sixty (60)~~ ninety (90) days after
25 the submission to confirm the nominee or if the senate does not by a majority vote of its members
26 extend the deliberation an additional seven (7) calendar days, the governor shall appoint some
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30 the governor for the purpose of nomination in accordance with this chapter. Any new list may
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2 of the nominee or nominees. At the public hearing, the testimony of every witness shall be taken
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14 issue, set forth in an order duly served on him or her, the committee by majority vote of the
15 committee members present may apply to any justice of the superior court, for any county, upon
16 proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than
17 five (5) days, directing the person to show cause before the justice who made the order or any
18 other justice of the superior court, why he or she should not be adjudged in contempt. Upon the
19 return of the order, the justice before whom the matter is brought on for hearing shall examine
20 under oath the person, and the person shall be given an opportunity to be heard, and if the justice
21 shall determine that the person has refused without reasonable cause or legal excuse to be
22 examined or to answer a legal and pertinent question, or to produce books, accounts, papers,
23 records, and documents material to the issue which he or she was ordered to bring or produce, he
24 or she may forthwith commit the offender to the adult correctional institution, there to remain
25 until the person submits to do the act which he or she was so required to do, or is discharged
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28 nominee or nominees, be furnished with a report compiled by the state police in conjunction with
29 the attorney general's office indicating the determinations and findings of the state police and
30 attorney general's office investigations concerning the background of the nominee or nominees,
31 and the report shall include, but not be limited to, the following:

32 (1) Whether the nominee has ever been convicted of or pleaded guilty to a misdemeanor
33 or felony in this or any other state or foreign country;

34 (2) Whether the nominee has ever filed a personal bankruptcy petition or an assignment

1 for the benefit of creditors in this or any other state or foreign country; and whether the nominee
2 has ever been a partner in, held ten percent (10%) or more of stock in, or held office in any sole
3 proprietorship, partnership, or corporation that has been involved in bankruptcy or receivership
4 actions as a debtor or because of insolvency at the time the nominee was a partner in, held ten
5 percent (10%) or more stock in, or held office in any such sole proprietorship, partnership, or
6 corporation;

7 (3) Whether the nominee has ever had a civil judgment rendered against him or her
8 arising out of an allegation of fraud, misrepresentation, libel, slander, professional negligence, or
9 any intentional tort in this state or any other state or foreign country;

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22 presiding justice of that court on an interim basis shall retain his or her status as an associate
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25 appoint some person from a list of three (3) to five (5) persons submitted to the governor by the
26 commission to fill the vacancy until the senate shall next convene, when the governor shall make
27 an appointment as provided in this section.

28 SECTION 2. This act shall take effect upon passage.

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LC00109
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COURTS AND CIVIL PROCEDURE--COURTS – JUDICIAL SELECTION

1 This act would terminate the governor’s right to appoint judges if not done within twenty-
2 one (21) days of the list of candidates from the Judicial Nominating Commission being submitted
3 to the governor. After the expiration of the twenty-one (21) day period and for a period of six (6)
4 months thereafter, the grand committee of the general assembly will then have the power to
5 appoint said judge.

6 This act would take effect upon passage.

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