

1 S.270

2 Introduced by Senators Vyhovsky and Hashim

3 Referred to Committee on

4 Date:

5 Subject: Judiciary; judicial nominations and confirmations

6 Statement of purpose of bill as introduced: This bill proposes the following
7 changes to judicial nomination and confirmation procedures: (1) requiring
8 members of the Judicial Nominating Board and candidates for judicial office to
9 be drawn from diverse backgrounds; (2) requiring that Judicial Nominating
10 Board hearings where candidates are interviewed be public; (3) requiring a
11 public hearing before the Senate votes to confirm a Governor's judicial or
12 Public Utility Commission appointment; and (4) amending several
13 qualification requirements for judicial nominees.

14 An act relating to judicial nominations and confirmations

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 Sec. 1. 4 V.S.A. § 601 is amended to read:

17 § 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION

18 (a) The Judicial Nominating Board is created for the nomination of
19 Supreme Court Justices, Superior judges, magistrates, and the Chair and
20 members of the Public Utility Commission.

1 (b) The Board shall consist of 11 members who shall be selected as
2 follows:

3 (1) The Governor shall appoint two members who are not attorneys at
4 law, one of whom shall be the Executive Director of the Office of Racial
5 Equity, or designee.

6 (2) The Senate shall elect three of its members, not all of whom shall be
7 members of the same party, and only one of whom may be an attorney at law.

8 (3) The House shall elect three of its members, not all of whom shall be
9 members of the same party, and only one of whom may be an attorney at law.

10 (4) Attorneys at law admitted to practice before the Supreme Court of
11 Vermont, and residing in the State, shall elect three of their number as
12 members of the Board. The Supreme Court shall regulate the manner of their
13 nomination and election.

14 (5) The members of the Board shall serve for terms of two years. All
15 appointments or elections shall be between January 1 and February 1 of each
16 odd-numbered year, except to fill a vacancy. A House vacancy that occurs
17 when the General Assembly is adjourned shall be filled by the Speaker of the
18 House and a Senate vacancy that occurs when the General Assembly is
19 adjourned shall be filled by the Senate Committee on Committees. Members
20 shall serve until their successors are elected or appointed. Members shall serve
21 ~~no~~ not more than three consecutive terms in any capacity.

1 (6) The members shall elect their own chair, who will serve for a term of
2 two years.

3 (7) Members shall be drawn from diverse backgrounds to represent the
4 interests of communities of color and other historically disadvantaged
5 communities throughout the State and, to the extent possible, represent
6 geographically diverse areas of the State.

7 (c) Legislative members of the Board shall be entitled to per diem
8 compensation and reimbursement for expenses in accordance with 2 V.S.A.
9 § 23. Members of the Board who are not otherwise compensated by their
10 employer shall be entitled to per diem compensation and reimbursement for
11 expenses in the same manner as board members are compensated under
12 32 V.S.A. § 1010. All compensation and reimbursement shall be paid from the
13 legislative appropriation.

14 (d) The Judicial Nominating Board shall adopt rules under 3 V.S.A.
15 chapter 25 that shall establish criteria and standards for the nomination of
16 candidates for Justices of the Supreme Court, Superior judges, magistrates, and
17 the Chair and members of the Public Utility Commission based on the
18 attributes identified in subsection 602(d) of this title. The application form
19 shall not be included in the rules and may be developed and periodically
20 revised at the discretion of the Board.

21 (e) A quorum of the Board shall consist of eight members.

1 (f) The Board is authorized to use the staff and services of appropriate State
2 agencies and departments as necessary to conduct investigations of applicants.
3 The Office of Legislative Counsel shall assist the Board for the purpose of
4 rulemaking.

5 (g) Except as provided in subsection (h) of this section, proceedings of the
6 Board, including ~~the names of candidates considered by the Board and~~
7 information about any candidate submitted by the Court Administrator or by
8 any other source, shall be confidential.

9 (h) The following shall be public:

10 (1) operating procedures of the Board;

11 (2) standard application forms and any other forms used by the Board,
12 provided they do not contain personal information about a candidate or
13 confidential proceedings;

14 (3) all proceedings of the Board prior to the Board's receipt of the first
15 candidate's completed application and all proceedings at which the Board
16 interviews a candidate who has applied for a position; and

17 (4) at the time the Board sends the names of the candidates to the
18 Governor, the total number of applicants for the vacancy and the total number
19 of candidates sent to the Governor.

1 Sec. 2. 4 V.S.A § 602 is amended to read:

2 § 602. DUTIES; JUSTICES, JUDGES, MAGISTRATES, AND THE CHAIR
3 OF THE PUBLIC UTILITY COMMISSION

4 (a)(1) Prior to submitting to the Governor the names of candidates for
5 Justices of the Supreme Court, Superior Court judges, magistrates, and the
6 Chair of the Public Utility Commission, the Judicial Nominating Board shall
7 submit to the Court Administrator a list of all candidates, and ~~he or she~~ the
8 Court Administrator shall disclose to the Board information solely about
9 professional disciplinary action taken or pending concerning any candidate.

10 (2) From the list of candidates, the Judicial Nominating Board shall
11 select by majority vote, provided that a quorum is present, ~~well-qualified~~
12 qualified candidates for the position to be filled.

13 (b) Whenever a vacancy occurs in the office of a Supreme Court Justice, a
14 Superior Court judge, magistrate, or Chair of the Public Utility Commission, or
15 when an incumbent does not declare that ~~he or she~~ the incumbent will be a
16 candidate to succeed himself or herself, the Board shall submit to the Governor
17 the names of as many persons as it deems ~~well~~ qualified to be appointed to the
18 office.

19 (c)(1) A candidate for judge or Justice shall be a Vermont resident and an
20 experienced lawyer who has practiced law ~~in Vermont~~ for a minimum of ~~ten~~
21 10 years, with at least ~~five~~ two years ~~immediately preceding his or her~~

1 ~~application to the Board of practice in Vermont. The Board may make~~
2 ~~exceptions to the five-year requirement for absences from practice for reasons~~
3 ~~including family, military, academic, or medical leave.~~

4 (2) A candidate for magistrate shall be a Vermont resident and an
5 experienced lawyer who has practiced law in Vermont for at least five years
6 immediately preceding ~~his or her~~ the candidate's application to the Board.

7 (3) A candidate for Chair of the Public Utility Commission shall not be
8 required to be an attorney; however if the candidate is admitted to practice law
9 in Vermont, the Judicial Nominating Board shall submit the candidate's name
10 to the Court Administrator, and ~~he or she~~ the candidate shall disclose to the
11 Board information solely about professional disciplinary action taken or
12 pending concerning the candidate. If a candidate is not admitted to practice
13 law in Vermont, but practices a profession requiring licensure, certification, or
14 other professional regulation by the State, the Judicial Nominating Board shall
15 submit the candidate's name to the State professional regulatory entity and that
16 entity shall disclose to the Board any professional disciplinary action taken or
17 pending concerning the candidate.

18 (d) A candidate shall possess the following attributes:

19 (1) Integrity. A candidate shall possess a record and reputation for
20 excellent character and integrity.

1 (2) Legal knowledge and ability. A candidate shall possess a high
2 degree of knowledge of established legal principles and procedures and have
3 demonstrated a high degree of ability to interpret and apply the law to specific
4 factual situations.

5 (3) Judicial temperament. A candidate shall possess an appropriate
6 judicial temperament.

7 (4) Impartiality. A candidate shall exhibit an ability to make judicial
8 determinations in a manner free of bias.

9 (5) Communication capability. A candidate shall possess demonstrated
10 oral and written capacities, with reasonable accommodations, required by the
11 position.

12 (6) Financial integrity. A candidate shall possess demonstrated financial
13 probity.

14 (7) Work ethic. A candidate shall demonstrate diligence.

15 (8) Administrative capabilities. A candidate shall demonstrate
16 management and organizational skills or experience required by the position.

17 (9) ~~Courtroom experience~~ Legal Experience. For Superior Court, a
18 candidate shall have sufficient trial or other comparable experience that
19 ensures knowledge of the ~~Vermont~~ Rules of Evidence and courtroom
20 procedure. For the Environmental Division of the Superior Court, a candidate
21 shall have experience in environmental and zoning law.

1 (10) Diversity of Experience. A candidate shall have a broad range of
2 lived experience and shall be drawn from diverse backgrounds to represent the
3 interests of communities of color and other historically disadvantaged
4 communities throughout the State and, to the extent possible, represent
5 geographically diverse areas of the State.

6 (11) Other. A candidate shall possess other attributes the Board deems
7 relevant as identified through its rules.

8 Sec. 3. 4 V.S.A. § 610 is added to read:

9 § 610. CONFIRMATION OF JUDGES; PUBLIC HEARING REQUIRED

10 Prior to the vote by the Senate on an appointment made by the Governor
11 pursuant to section 603 of this title, the Senate Committee on Judiciary, or the
12 Senate Committee on Finance in the case of an appointment to the Public
13 Utility Commission, shall hold a public hearing to permit members of the
14 public to comment on the appointment.

15 Sec. 4. EFFECTIVE DATE

16 This act shall take effect on passage.