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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - COURTS - JUDICIAL SELECTION

Introduced By: Senator Maryellen Goodwin

Date Introduced: February 28, 2013

Referred To: Senate 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 [Repealed effective June 30, 2012.]**~~
4 ~~-- **Nomination and appointment of judges. [Repealed effective June 30, 2013.]**--~~ **Nomination**
5 **and appointment of judges. [Repealed effective June 30, 2014.]** -- (a) (1) The governor shall
6 immediately notify the commission of any vacancy or prospective vacancy of a judge of any state
7 court other than the Rhode Island supreme court. The commission shall advertise for each
8 vacancy and solicit prospective candidates and shall consider names submitted from any source.
9 Within ninety (90) days of any vacancy the commission shall publicly submit the names of not
10 less than three (3) and not more than five (5) highly qualified persons for each vacancy to the
11 governor.

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

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

1 commission unless such individuals withdraw from future consideration in writing to the judicial
2 nominating commission. However, such individuals must reapply for any subsequent vacancy or
3 prospective vacancy in the same court for the position of presiding justice, chief justice, or chief
4 judge.

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

13 (b) The governor shall fill any vacancy within twenty-one (21) days of the public
14 submission by the commission.

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

28 (d) During the time for consideration of the nominees by the senate, the senate judiciary
29 committee shall conduct an investigation and public hearing on the question of the qualifications
30 of the nominee or nominees. At the public hearing, the testimony of every witness shall be taken
31 under oath and stenographic records shall be taken and maintained. Further, the senate judiciary
32 committee shall during the course of its investigation and hearing have the power upon majority
33 vote of the committee members present to issue witness subpoenas, subpoenas duces tecum, and
34 orders for the production of books, accounts, papers, records, and documents which shall be

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

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

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

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

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

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

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

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

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

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

22 ~~8-16.1-6. Nomination and appointment of judges. [Effective June 30, 2012.]~~
23 ~~Nomination and appointment of judges. [Effective June 30, 2013.]~~ **Nomination and**
24 **appointment of judges. [Effective June 30, 2014.]** -- (a) The governor shall immediately notify
25 the commission of any vacancy or prospective vacancy of a judge of any state court other than the
26 Rhode Island supreme court. The commission shall advertise for each vacancy and solicit
27 prospective candidates and shall consider names submitted from any source. Within ninety (90)
28 days of any vacancy the commission shall publicly submit the names of not less than three (3)
29 and not more than five (5) highly qualified persons for each vacancy to the governor. The
30 governor shall fill any vacancy of any judge of the Rhode Island superior court, family court,
31 district court, workers' compensation court, or any other state court which the general assembly
32 may from time to time establish, by nominating one of the three (3) to five (5) highly qualified
33 persons forwarded to him or her by the commission for the court where the vacancy occurs.

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7 extend the deliberation an additional seven (7) calendar days, the governor shall appoint some
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9 confirmation in like manner until the senate shall confirm the nomination. If the nominee is
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27 cause, refuse to be sworn, or to be examined, or to answer a legal and pertinent question, or if any
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29 issue, set forth in an order duly served on him or her, the committee by majority vote of the
30 committee members present may apply to any justice of the superior court, for any county, upon
31 proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than
32 five (5) days, directing the person to show cause before the justice who made the order or any
33 other justice of the superior court, why he or she should not be adjudged in contempt. Upon the
34 return of the order, the justice before whom the matter is brought on for hearing shall examine

1 under oath the person, and the person shall be given an opportunity to be heard, and if the justice
2 shall determine that the person has refused without reasonable cause or legal excuse to be
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14 or felony in this or any other state or foreign country;

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

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

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6 appoint some person from a list of three (3) to five (5) persons submitted to the governor by the
7 commission to fill the vacancy until the senate shall next convene, when the governor shall make
8 an appointment as provided in this section.

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

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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 make any individual whose name was publicly submitted to the governor
2 by the judicial nominating commission, eligible for subsequent nomination by the governor until
3 June 30, 2014, for any vacancy or prospective vacancy of a judge in the same court for which that
4 particular individual had previously applied except for a vacancy in the position of presiding
5 justice, chief justice, or chief judge.

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