

2021 -- H 5299

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

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

Introduced By: Representatives Williams, Giraldo, Morales, Batista, and Vella-
Wilkinson

Date Introduced: January 29, 2021

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 8-16.1-2, 8-16.1-4 and 8-16.1-6 of the General Laws in Chapter 8-
2 16.1 entitled "Judicial Selection" are hereby amended to read as follows:

3 **8-16.1-2. Judicial nominating commission.**

4 (a) There is hereby established an independent nonpartisan judicial nominating
5 commission which shall consist of nine (9) members, all of whom shall be residents of the state of
6 Rhode Island, and who shall be appointed as follows:

7 (1) Within seven (7) days after June 2, 1994:

8 (i) The speaker of the house of representatives shall submit to the governor a list of at least
9 three (3) attorneys;

10 (ii) The president of the senate shall submit to the governor a list of at least three (3) persons
11 who may be attorneys and/or members of the public;

12 (iii) The speaker of the house of representatives and the president of the senate shall jointly
13 submit to the governor a list of four (4) members of the public;

14 (iv) The minority leader of the house of representatives shall submit to the governor a list
15 of at least three (3) members of the public; and

16 (v) The minority leader of the senate shall submit to the governor a list of at least three (3)
17 members of the public.

18 (2) Within fourteen (14) days after June 2, 1994, the governor shall appoint to the
19 commission:

1 (i) One person from each of the lists submitted in accordance with subsection (a)(1) of this
2 section;

3 (ii) Three (3) attorneys, without regard to any of the lists; and

4 (iii) One member of the public, without regard to any of the lists.

5 (3) The governor and the nominating authorities hereunder shall ~~exercise reasonable efforts~~
6 ~~to encourage racial, ethnic, and gender diversity within the commission~~ ensure that the membership
7 of the commission reflects the racial, ethnic, and gender diversity of the state's population.

8 (b) Members of the commission shall serve for terms of four (4) years, except that, of the
9 members first appointed:

10 (1) The individual appointed from the list submitted by the minority leader of the house of
11 representatives and one of the attorneys appointed by the governor without regard to any of the lists
12 shall serve for one year;

13 (2) The individual appointed from the list submitted by the minority leader of the senate
14 and one of the attorneys appointed by the governor without regard to any of the lists shall serve for
15 two (2) years;

16 (3) The individual appointed from the list submitted jointly by the speaker of the house of
17 representatives and by the president of the senate and the member of the public appointed by the
18 governor without regard to any of the lists shall serve for three (3) years; and

19 (4) The individuals appointed from the lists submitted by the president of the senate and
20 by the speaker of the house of representatives and one of the attorneys appointed by the governor
21 without regard to any of the lists shall serve for four (4) years.

22 (c) No person shall be appointed at any time to serve more than one term as a member of
23 the commission; provided, however, that a person initially appointed to serve twelve (12) months
24 or less of a full four (4) year term may, upon expiration of that term, be reappointed to serve one
25 full term; and provided further, however, that each member shall continue to serve until his or her
26 successor is appointed and qualified. No commission member shall be a legislator, judge, or elected
27 official, or be a candidate for any public office, or hold any compensated federal, state, or municipal
28 public office or elected office in a political party during his or her tenure or for a period of one year
29 prior to appointment. No member of the commission may hold any other public office (except that
30 of notary public) under the laws of the United States, of this state, or of any other governmental
31 entity for which monetary compensation is received. No members shall be eligible for appointment
32 to a state judicial office during the period of time he or she is a commission member and for a
33 period of one year thereafter. No two (2) or more members of the commission shall be members or
34 employees of the same law firm, or employees of the same profit or nonprofit corporation.

1 Vacancies other than those arising through the expiration of a term shall be filled for the unexpired
2 portion of the term in the same manner as vacancies due to the expiration of a term.

3 (d) A quorum consisting of five (5) members shall be necessary in order for the commission
4 to conduct any business. All names submitted to the governor by the commission shall be approved
5 by at least five (5) members of the commission voting in favor of each selection.

6 (e) The commission shall have the power to adopt rules and procedures which aid in its
7 selection of the most highly qualified nominees for judicial office. The governor shall designate a
8 member of the commission to serve as chairperson, who shall serve in that capacity for the duration
9 of his or her tenure. All meetings of the commission shall be subject to the open meetings law as
10 defined in chapter 46 of title 42.

11 (f) The commission is hereby authorized and empowered to investigate the personal
12 background of each nominee as it relates to a determination of judicial fitness through the Rhode
13 Island state police and the attorney general's office, and to require full financial disclosure under
14 the provisions of chapter 14 of title 36.

15 (g) The commission shall direct the performance of such administrative duties as may be
16 required for the effective discharge of the obligations granted to the commission, and is hereby
17 empowered to engage the services of legal, secretarial, clerical, and investigative employees and to
18 make such other expenditures as are necessary for the effective performance of its functions.
19 Expenses for office space, staffing, and necessary monetary outlays shall be provided by the
20 department of administration as a separate line item in the state budget under the term "judicial
21 nominating commission."

22 (h) Each person appointed to the commission shall, prior to exercising any authority or
23 assuming any duties as a member of the commission, take an engagement of office in accordance
24 with § 36-1-2. The governor may remove a commission member from office for neglect of duty,
25 malfeasance in office, or conviction of a criminal offense. After a commission member is notified
26 of any allegations against her or him in writing, the commission member shall be entitled to one
27 public hearing prior to removal by the governor.

28 **8-16.1-4. Criteria for selection of best qualified nominees.**

29 (a) A diverse judiciary ensures that a broad array of perspectives and experiences are
30 brought to the bench, reinforces public trust and confidence in the fairness of the judicial system
31 and the administration of justice and ultimately enhances the delivery of justice and the judiciary's
32 credibility and moral authority.

33 ~~(a)~~(b) The commission shall consider, but is not limited to, the following factors in
34 selecting the best qualified nominees: intellect, ability, temperament, impartiality, diligence,

1 experience, maturity, education, publications, and record of public, community, and government
2 service. Every person shall, at the time of consideration by the commission, be an attorney and
3 licensed to practice law in the state of Rhode Island and be a current member of the Rhode Island
4 bar association in good standing.

5 ~~(b)~~(c) The commission shall exercise reasonable efforts to encourage racial, ethnic, and
6 gender diversity within the judiciary of this state. To further this goal, on an annual basis, the
7 commission shall report to the general assembly and to the governor on (i) the statistics regarding
8 the race, ethnicity and gender of applicants considered by the commission in the previous year and
9 (ii) efforts made by the commission during the previous year to ~~encourage~~ promote racial, ethnic
10 and gender diversity within the judiciary of this state. The form of the report and the means by
11 which the commission shall request the necessary information from applicants shall be determined
12 by the commission pursuant to its rule-making authority, except that no applicant shall be required
13 to provide the information as a prerequisite to consideration, and the identifying information with
14 respect to race, ethnicity and gender shall be collected anonymously from applicants. The report
15 shall be made available to the public. The commission shall also consider the candidate's sensitivity
16 to historically disadvantaged classes, and may disqualify any candidate with a demonstrated history
17 of bias towards any of these classes.

18 **8-16.1-6. Nomination and appointment of judges.**

19 (a) The governor shall immediately notify the commission of any vacancy or prospective
20 vacancy of a judge of any state court other than the Rhode Island supreme court. The commission
21 shall advertise for each vacancy and solicit prospective candidates and shall consider names
22 submitted from any source. Within ninety (90) days of any vacancy, the commission shall publicly
23 submit a list of the names of not less than three (3), and not more than five (5), highly qualified
24 persons for each vacancy to the governor which shall include a person of color. The governor shall
25 fill any vacancy of any judge of the Rhode Island superior court, family court, district court,
26 workers' compensation court, or any other state court that the general assembly may, from time to
27 time, establish, by nominating one of the three (3) to five (5) highly qualified persons forwarded to
28 him or her by the commission for the court where the vacancy occurs.

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

31 (c) Each nomination shall be forwarded forthwith to the senate, and by and with the advice
32 and consent of the senate, each nominee shall be appointed by the governor to serve subject to the
33 general laws. The senate shall, after seven (7) calendar days of receipt of the nomination consider
34 the nomination, but if the senate fails within ninety (90) days after the submission to confirm the

1 nominee, or if the senate does not, by a majority vote of its members, extend the deliberation an
2 additional seven (7) calendar days, the governor shall appoint some other person to fill the vacancy
3 and shall submit his or her appointment to the senate for confirmation in like manner until the
4 senate shall confirm the nomination. If the nominee is rejected by the senate, the commission shall
5 submit a new list of three (3) to five (5) candidates to the governor for the purpose of nomination
6 in accordance with this chapter. Any new list may include, but need not be limited to, the names of
7 any candidates who were previously submitted to the governor by the commission but who were
8 not forwarded to the senate for its advice and consent.

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

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

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

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

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

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

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

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

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

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

1 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 promote more diversity in the composition of the judicial nominating
2 commission and would require that each list of qualified judicial candidates it submits to the
3 governor for nomination include a person of color.

4 This act would take effect upon passage.

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