

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2386 Session of  
2008

INTRODUCED BY STEIL, SHAPIRO, BRENNAN, GOODMAN, HENNESSEY,  
JOSEPHS, ROSS, THOMAS AND VITALI, MAY 2, 2008

REFERRED TO COMMITTEE ON JUDICIARY, MAY 2, 2008

AN ACT

1 Amending Title 71 (State Government) of the Pennsylvania  
2 Consolidated Statutes, establishing the Appellate Court  
3 Nominating Commission.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 71 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a part to read:

8 PART III

9 JUDICIAL MATTERS

10 Chapter

11 21. Appellate Court Nominating Commission

12 CHAPTER 21

13 APPELLATE COURT NOMINATING COMMISSION

14 Sec.

15 2101. Definitions.

16 2102. Establishment and purpose.

17 2103. Membership, qualifications and operation.

18 2104. Judicial nominee applicants.

1   § 2101. Definitions.

2       The following words and phrases when used in this chapter  
3   shall have the meanings given to them in this section unless the  
4   context clearly indicates otherwise:

5       "Business organization." An organization that represents the  
6   interests of persons engaged in commercial, industrial or  
7   agricultural enterprises.

8       "Civic group." A Pennsylvania nonprofit corporation that is  
9   exempt from Federal income tax under section 501(c)(3) of the  
10   Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
11   501(c)(3)). The term does not include any organization formed  
12   for a religious purpose or any organization that does not have  
13   members who are Commonwealth residents.

14       "Commission." The Appellate Court Nominating Commission  
15   established under section 14 of Article V of the Constitution of  
16   Pennsylvania and under section 2102 (relating to establishment  
17   and purpose).

18       "Department." The Department of State of the Commonwealth.

19       "Law school." A graduate school located in this  
20   Commonwealth, accredited by the American Bar Association and  
21   offering study leading to the degree of Juris Doctor.

22       "Law school dean" or "dean." The administrator in charge of  
23   a law school.

24       "Lobbyist." As defined under 65 Pa.C.S. § 13A03 (relating to  
25   definitions).

26       "Professional association." An organization that represents  
27   the interests of its members who practice a profession. The term  
28   does not include associations that represent attorneys.

29       "Public members." Members of the commission appointed under  
30   section 2103(a)(3) (relating to membership, qualifications and

1 operation).

2 "Public safety association." An organization that represents  
3 the interests of its members who are engaged in an occupation  
4 responsible for public safety, including law enforcement  
5 agencies, district attorneys' associations, victims' rights  
6 groups, fire departments or emergency medical service providers.

7 "Secretary." The Secretary of State.

8 "Union." An organization of employees, not dominated or  
9 controlled by any employer or any employer organization, having  
10 among its purposes that of collective bargaining as to the terms  
11 and conditions of employment.

12 § 2102. Establishment and purpose.

13 Pursuant to section 14 of Article V of the Constitution of  
14 Pennsylvania, there is established an Appellate Court Nominating  
15 Commission within the department. The purpose of the commission  
16 shall be to nominate individuals for the offices of justice of  
17 the Supreme Court and judge of the Superior Court and  
18 Commonwealth Court.

19 § 2103. Membership, qualifications and operation.

20 (a) Composition.--The commission shall be comprised of the  
21 following:

22 (1) Four legislative appointees. The following shall  
23 apply:

24 (i) Appointments are as follows:

25 (A) One individual appointed by the President  
26 pro tempore of the Senate.

27 (B) One individual appointed by the Minority  
28 Leader of the Senate.

29 (C) One individual appointed by the Speaker of  
30 the House of Representatives.

1                   (D) One individual appointed by the Minority  
2                   Leader of the House of Representatives.

3                   (ii) Each of the members appointed under  
4                   subparagraph (i) shall be members of the bar of the  
5                   Supreme Court but may not be justices, judges or  
6                   magisterial district judges.

7                   (iii) None of the members appointed under  
8                   subparagraph (i) may be members of the General Assembly  
9                   or their staff or a relative of a member of the General  
10                   Assembly or a relative of a General Assembly member's  
11                   staff. For purposes of this subparagraph, a relative  
12                   shall include a wife, husband, child, mother, father,  
13                   sister or brother.

14                   (2) Four members appointed by the Governor. The  
15                   following shall apply:

16                   (i) Two individuals shall be members of the bar of  
17                   the Supreme Court but may not be justices, judges or  
18                   magisterial district judges.

19                   (ii) At the time of appointment, all individuals  
20                   shall be residents of different counties.

21                   (iii) No more than two individuals shall be  
22                   registered in the same political party.

23                   (iv) None of the members appointed by the Governor  
24                   may be a member of the Governor's staff, a relative of  
25                   the Governor or a relative of the Governor's staff. For  
26                   purposes of this subparagraph, a relative shall include a  
27                   wife, husband, child, mother, father, sister or brother.

28                   (3) Six public members. The following shall apply:

29                   (i) One public member shall be a dean of one of the  
30                   law schools located in this Commonwealth, who shall be

1       selected as follows:

2               (A) Within 30 days following the effective date  
3               of this section and at least 120 days prior to the  
4               expiration of each term of the law school dean member  
5               of the commission, the secretary shall notify each  
6               law school dean that they are to choose from among  
7               themselves a law school dean to serve as a member of  
8               the commission.

9               (B) Within 60 days following receipt of the  
10              notification under clause (A), the deans shall choose  
11              who among them will be a member of the commission.

12              (C) As soon as practicable following their  
13              selection, the deans shall send a letter to the  
14              secretary, signed by each dean, notifying the  
15              secretary of their selection.

16              (D) Upon expiration of a dean's term on the  
17              commission, the same process shall be used to fill  
18              the vacancy, except that the successor dean shall  
19              come from a different law school than the outgoing  
20              dean.

21              (ii) Five public members, one each selected by  
22              business organizations, civic organizations, professional  
23              associations, public safety organizations, unions and  
24              federation of unions. The following shall apply:

25              (A) Within 30 days following the effective date  
26              of this section and at least 120 days prior to the  
27              expiration of each term of the public members of the  
28              commission other than the law school dean member, the  
29              secretary shall transmit a notice for publication to  
30              two newspapers in every county in this Commonwealth

1 and to the Legislative Reference Bureau for  
2 publication in the Pennsylvania Bulletin that will  
3 alert the organizations described under subparagraph  
4 (ii) that they may apply to be included in the  
5 process of appointing members of the commission. The  
6 notice shall also describe details of the application  
7 process and shall include a form of application to be  
8 used. The notice and the form of application shall  
9 also be posted on the department's Internet website.

10 (B) An organization described under subparagraph  
11 (ii) that desires to participate in the nomination  
12 process shall submit an application to the secretary.  
13 All applications shall be submitted by the date  
14 occurring 30 days after the date of publication in  
15 the Pennsylvania Bulletin of the notice described  
16 under clause (A) and shall include all of the  
17 following:

18 (I) The name and address of the organization  
19 and the name and telephone number of a contact  
20 person. The organization must indicate that its  
21 principal place of business is in this  
22 Commonwealth.

23 (II) A statement as to the specific category  
24 for which the organization wishes to be  
25 considered. An organization may only submit an  
26 application for one of the categories listed  
27 under subparagraph (ii) for a given vacancy.

28 (III) A statement of the number of members  
29 of the organization who are Commonwealth  
30 residents as of the date of the application.

1                   (IV) Any other information required by the  
2                   department. Any person who makes a false  
3                   statement on an application submitted under this  
4                   subparagraph shall be subject to prosecution  
5                   under 18 Pa.C.S. §§ 4903 (relating to false  
6                   swearing) and 4904 (relating to unsworn  
7                   falsification to authorities).

8                   (C) Within 15 days following the last day for  
9                   receipt of applications under clause (B), the  
10                  secretary shall notify the five organizations in each  
11                  of the categories listed under subparagraph (ii) with  
12                  the highest number of members who are Commonwealth  
13                  residents that they are eligible to submit the name  
14                  of a person in their organization who meets the  
15                  requirements of subsection (b) who desires to be  
16                  considered for selection as a member of the  
17                  commission. The names shall be submitted in writing  
18                  to the secretary within 15 days following receipt of  
19                  the notification required under this clause.

20                  (D) Within ten days following receipt of the  
21                  names of individuals submitted by organizations under  
22                  clause (C), the secretary shall publicly draw lots  
23                  from each of the five categories of organizations to  
24                  determine who shall serve as the public member of the  
25                  commission from each category.

26                  (E) Upon expiration of a public member's term on  
27                  the commission, the same selection process shall be  
28                  used to fill the vacancy.

29                  (b) Qualifications of members.--

30                  (1) All members of the commission shall have been a

1 resident of this Commonwealth for at least one year prior to  
2 the member's appointment.

3 (2) All members of the commission must be 18 years of  
4 age or older as of the date of their appointment.

5 (3) During his or her term, a member may not do any of  
6 the following:

7 (i) Hold any office in any political party or  
8 political organization or hold any elected or appointed  
9 public office, compensated or uncompensated, except that  
10 members may serve as part-time solicitors to a political  
11 subdivision.

12 (ii) Be employed by the unified judicial system.

13 (4) No person who is a lobbyist may be appointed to  
14 serve on the commission.

15 (5) In making appointments to the commission, each  
16 nominating or appointing authority shall take into  
17 consideration that the commission should include men and  
18 women, as well as individuals who represent racially and  
19 ethnically diverse backgrounds, and who reflect the  
20 geographic diversity of this Commonwealth.

21 (c) Terms of office, removal and vacancies.--

22 (1) Except as provided under paragraph (2), commission  
23 members shall serve a term of four years.

24 (2) Limitations on terms shall be as follows:

25 (i) The original members of the commission shall  
26 have the following terms:

27 (A) The legislative appointees shall have the  
28 following terms:

29 (I) The appointee of the President pro  
30 tempore of the Senate shall serve for four years.

1                   (II) The appointee of the Speaker of the  
2                   House of Representatives shall serve for three  
3                   years.

4                   (III) The appointee of the Minority Leader  
5                   of the Senate shall serve for two years.

6                   (IV) The appointee of the Minority Leader of  
7                   the House of Representatives shall serve for one  
8                   year.

9                   (B) The Governor's appointees shall have the  
10                  following terms:

11                  (I) One appointee shall serve for four  
12                  years.

13                  (II) One appointee shall serve for three  
14                  years.

15                  (III) One appointee shall serve for two  
16                  years.

17                  (IV) One appointee shall serve for one year.

18                  (C) The public members shall serve for four  
19                  years.

20                  (ii) A member who has served a full term shall not  
21                  be permitted to serve during the next succeeding term.

22                  (iii) For purposes of this paragraph, service for a  
23                  period of two years or less shall not be considered a  
24                  full term.

25                  (3) Commission members may only be removed by the  
26                  commission for the following reasons:

27                  (i) For a violation of the commission's rules  
28                  governing the conduct of members.

29                  (ii) If the person, during the course of the  
30                  person's term, no longer meets the qualifications of

1        subsection (b)(1), (2), (3) or (4).

2        (4) In the event of a vacancy on the commission the  
3        following shall apply:

4            (i) If the vacancy occurs for a reason stated under  
5            paragraph (3), the vacancy shall be filled for the  
6            remainder of the term in the same manner the outgoing  
7            member was initially appointed, except that, if the  
8            vacancy is created because a public member selected under  
9            subsection (a)(3)(ii) is removed from the commission, the  
10           organization that appointed the member shall select a new  
11           member.

12           (ii) If a vacancy occurs as a result of the  
13           expiration of the term of a legislative or gubernatorial  
14           appointee, a new member shall be appointed in the same  
15           manner as the member was initially appointed.

16           (iii) If a vacancy occurs as a result of the  
17           expiration of the term of a public member selected under  
18           subsection (a)(3)(i), the vacancy shall be filled in the  
19           same manner as the member was originally selected.

20           (iv) If a vacancy occurs as a result of the  
21           expiration of the term of a public member selected under  
22           subsection (a)(3)(ii), the secretary shall fill the  
23           vacancy in the same manner as the member was initially  
24           selected, except that the public organization that  
25           nominated the commission member whose vacancy is being  
26           filled shall not be permitted to participate in the  
27           process to select the immediately succeeding commission  
28           member.

29        (d) Operation.--

30           (1) From among the commission's members, the commission

1 shall select a chairperson, vice chairperson and other  
2 officers as the commission shall determine.

3 (2) The commission shall establish its own rules of  
4 procedure and rules governing the conduct of its members.

5 (3) Nine members shall constitute a quorum. A majority  
6 of the members present at any meeting of the commission shall  
7 be required for all actions of the commission.

8 (4) Members shall not be compensated for their service  
9 as members of the commission but shall be reimbursed for  
10 expenses necessarily incurred in the discharge of their  
11 official duties in accordance with Commonwealth policy in  
12 effect for community agencies under the Governor's  
13 jurisdiction.

14 (5) The department shall provide administrative support  
15 for the commission.

16 § 2104. Judicial nominee applicants.

17 (a) Solicitation.--

18 (1) When it is known that a vacancy will occur, the  
19 commission shall publicly announce the vacancy no later than  
20 90 days prior to the expected date of the vacancy.

21 (2) If an unexpected vacancy occurs, the commission  
22 shall publicly announce the vacancy within 30 days following  
23 the vacancy.

24 (3) The commission shall develop the form of application  
25 to be submitted and shall make the form available at the time  
26 a public announcement regarding a vacancy is made.  
27 Applications may be submitted by individuals desiring to be  
28 considered for nomination to fill a vacancy commencing with  
29 the date of the public announcement and ending on the date  
30 occurring 30 days later.

1     (b) Review of applications and evaluation of applicants.--

2         (1) The commission shall review and evaluate all  
3     applications submitted to fill vacancies.

4         (2) The commission shall interview the applicant and may  
5     interview individuals with knowledge of the applicant.

6         (3) The commission may obtain any appropriate or  
7     relevant documentation that relates to the applicant's  
8     suitability to serve as a justice or judge.

9     (c) Selection.--

10         (1) From the applications received and reviewed under  
11     subsection (b), the commission shall agree on at least two  
12     but no more than five names of the most qualified applicants  
13     whose names will be recommended to the Governor. In order for  
14     an individual's name to appear on the list, the individual  
15     must meet all of the following requirements:

16             (i) Notwithstanding the provisions of section  
17             2103(d)(3), (relating to membership, qualifications and  
18             operation), received affirmative votes from at least  
19             eight of the members of the commission.

20             (ii) Is a licensed member in good standing of the  
21             bar of the Supreme Court.

22             (iii) Has either practiced law, served as a judge of  
23             a Federal court, served on a court or courts of record of  
24             this Commonwealth or been engaged in a law-related  
25             occupation for an aggregate of at least ten years prior  
26             to the date of the nomination.

27             (iv) Has demonstrated integrity, judicial  
28             temperament, professional competence and experience and  
29             commitment to the community.

30         (2) The commission shall consider that each of the

1 appellate courts should include both men and women who come  
2 from racially and ethnically diverse backgrounds and who  
3 reflect the geographic diversity of this Commonwealth.

4 (d) Presentation of applicants to the Governor.--

5 (1) The list of the most qualified applicants shall be  
6 presented to the Governor no later than 30 days prior to the  
7 expected date of the vacancy or, with respect to an  
8 unexpected vacancy, no later than 60 days after the vacancy  
9 occurs.

10 (2) The names of the applicants on the list shall appear  
11 in alphabetical order. The commission shall submit  
12 biographical information regarding each applicant along with  
13 the list of names.

14 (3) Only one list may be provided to the Governor for  
15 each vacancy. If there is more than one vacancy on the same  
16 court, separate lists shall be submitted to the Governor for  
17 each vacancy, and the lists shall contain no more than two  
18 names in common.

19 (4) In the event of death or withdrawal of a person  
20 whose name appears on the list presented to the Governor, the  
21 commission shall submit to the Governor an addendum to the  
22 list providing the name of a new applicant selected in the  
23 same manner as the other individuals on the list.

24 (e) Publication.--

25 (1) Immediately following submission to the Governor,  
26 the list shall be submitted to the Senate and shall be made  
27 available to the public.

28 (2) The biographical information of the applicants shall  
29 be made available to the Senate and to the public.

30 (3) All other information submitted to or developed by

1     the commission concerning applicants, whether or not the  
2     applicants' names appear on the list submitted to the  
3     Governor, and all proceedings, deliberations and votes of the  
4     commission shall remain confidential and shall not be subject  
5     to disclosure under the act of June 21, 1957 (P.L.390,  
6     No.212), referred to as the Right-to-Know Law.

7     Section 2. The Secretary of State shall transmit notice to  
8     the Legislative Reference Bureau for publication in the  
9     Pennsylvania Bulletin of passage of a constitutional amendment  
10    providing for an Appellate Court Nominating Commission.

11    Section 3. This act shall take effect upon publication in  
12    the Pennsylvania Bulletin of the notice under section 2.