

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1325 Session of
2008

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ERICKSON, C. WILLIAMS, PIPPY AND VANCE, APRIL 9, 2008

REFERRED TO JUDICIARY, APRIL 9, 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 Pennsylvania 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 in 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 lawyers.

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 the Commonwealth.

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. For purposes of this subparagraph, a relative
11 shall include a wife, husband, child, mother, father,
12 sister or brother.

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

15 (i) No fewer than two individuals shall be members
16 of the bar of the Supreme Court but may not be justices,
17 judges or magisterial district judges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (IV) Any other information required by the

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

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

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

25 (E) Upon expiration of a public member's term on
26 the commission, the same selection process shall be
27 used to fill the vacancy, except as provided in
28 subsection (c)(4)(iv).

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 geographic
20 diversity of this Commonwealth.

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

22 (1) Commission members shall serve a term of four years.

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

24 (i) Each member shall only serve until the end of
25 that member's term.

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

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

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

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

5 (ii) If the person, during the course of the
6 person's term, no longer meets the qualifications of
7 subsection (b)(1), (2), (3) or (4).

8 (4) In the event of a vacancy on the commission the
9 following shall apply:

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

18 (ii) If a vacancy occurs as a result of the
19 expiration of the term of a legislative or gubernatorial
20 appointee, a new member shall be appointed in the same
21 manner as the member was initially appointed.

22 (iii) If a vacancy occurs as a result of the
23 expiration of the term of a public member selected under
24 subsection (a)(3)(i), the vacancy shall be filled in the
25 same manner as the member was originally selected.

26 (iv) If a vacancy occurs as a result of the
27 expiration of the term of a public member selected under
28 subsection (a)(3)(ii), the secretary shall fill the
29 vacancy in the same manner as the member was initially
30 selected, except that the public organization that

1 nominated the commission member whose vacancy is being
2 filled may not participate in the process to select the
3 immediately succeeding commission member.

4 (d) Operation.--

5 (1) From among the commission's members, the commission
6 shall select a chairperson, vice chairperson and other
7 officers as the commission shall determine.

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

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

13 (4) Members shall not be compensated for their service
14 as members of the commission but shall be reimbursed for
15 expenses necessarily incurred in the discharge of their
16 official duties in accordance with Commonwealth policy in
17 effect for community agencies under the Governor's
18 jurisdiction.

19 (5) The department shall provide administrative support
20 for the commission.

21 § 2104. Judicial nominee applicants.

22 (a) Solicitation.--

23 (1) When it is known that a vacancy will occur, the
24 commission shall publicly announce the vacancy no later than
25 90 days prior to the expected date of the vacancy.

26 (2) If an unexpected vacancy occurs, the commission
27 shall publicly announce the vacancy within 30 days following
28 the vacancy.

29 (3) The commission shall develop the form of application
30 to be submitted and shall make the form available at the time

1 a public announcement regarding a vacancy is made.
2 Applications may be submitted by individuals desiring to be
3 considered for nomination to fill a vacancy commencing with
4 the date of the public announcement and ending on the date
5 occurring 30 days later.

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

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

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

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

14 (c) Selection.--

15 (1) From the applications received and reviewed under
16 subsection (b), the commission shall agree on five names of
17 the most qualified applicants whose names will be recommended
18 to the Governor. In order for an individual's name to appear
19 on the list, the individual must meet all of the following
20 requirements:

21 (i) Notwithstanding the provisions of section
22 2103(d)(3), (relating to membership, qualifications and
23 operation), received affirmative votes from at least
24 eight of the members of the commission.

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

27 (iii) Has either practiced law, served as a judge of
28 a Federal court, served on a court or courts of record of
29 this Commonwealth or been engaged in a law-related
30 occupation for an aggregate of at least ten years prior

1 to the date of the nomination.

2 (iv) Has demonstrated integrity, judicial
3 temperament, professional competence and experience and
4 commitment to the community.

5 (2) The commission shall consider that each of the
6 appellate courts should include both men and women who come
7 from racially and ethnically diverse backgrounds and who
8 reflect the geographic diversity of this Commonwealth.

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

10 (1) The list of the most qualified applicants shall be
11 presented to the Governor no later than 30 days prior to the
12 expected date of the vacancy or, with respect to an
13 unexpected vacancy, no later than 60 days after the vacancy
14 occurs.

15 (2) The names of the applicants on the list shall appear
16 in alphabetical order. The commission shall submit
17 biographical information regarding each applicant along with
18 the list of names.

19 (3) Only one list may be provided to the Governor for
20 each vacancy. If there is more than one vacancy on the same
21 court, separate lists shall be submitted to the Governor for
22 each vacancy, and the lists shall contain no more than two
23 names in common.

24 (4) In the event of death or withdrawal of a person
25 whose name appears on the list presented to the Governor, the
26 commission shall submit to the Governor an addendum to the
27 list providing the name of a new applicant selected in the
28 same manner as the other individuals on the list.

29 (e) Publication.--

30 (1) Immediately following submission to the Governor,

1 the list shall be submitted to the Senate and shall be made
2 available to the public.

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

5 (3) All other information submitted to or developed by
6 the commission concerning applicants, whether or not the
7 applicants' names appear on the list submitted to the
8 Governor, and all proceedings, deliberations and votes of the
9 commission shall remain confidential and shall not be subject
10 to disclosure under the act of June 21, 1957 (P.L.390,
11 No.212), referred to as the Right-to-Know Law.

12 Section 2. The Secretary of State shall transmit notice to
13 the Legislative Reference Bureau for publication in the
14 Pennsylvania Bulletin of passage of a constitutional amendment
15 providing for an Appellate Court Nominating Commission.

16 Section 3. This act shall take effect as follows:

17 (1) Section 2 and this section shall take effect
18 immediately.

19 (2) The remainder of this act shall take effect upon
20 publication of the notice under section 2.