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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1816 Session of  
2011

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INTRODUCED BY CUTLER, CREIGHTON, EVERETT, MARSICO, MILNE, MOUL,  
MULLERY, MUNDY, MURT, PAYTON, QUINN, ROSS AND SCHRODER,  
AUGUST 22, 2011

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REFERRED TO COMMITTEE ON JUDICIARY, AUGUST 22, 2011

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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 "Bar association." An organization that represents the  
6 interests of its members who are members of the bar of the  
7 Supreme Court and who practice in the legal profession. The term  
8 does not include any association that does not have a majority  
9 of members who are Commonwealth residents.

10 "Business organization." An organization that represents the  
11 interests of persons engaged in commercial, industrial or  
12 agricultural enterprises.

13 "Civic group." A Pennsylvania nonprofit corporation that is  
14 exempt from Federal income tax under section 501(c) (3) of the  
15 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
16 501(c) (3)). The term does not include any organization formed  
17 for a religious purpose or any organization that does not have a  
18 majority of members who are Commonwealth residents.

19 "Commission." The Appellate Court Nominating Commission  
20 established under section 14 of Article V of the Constitution of  
21 Pennsylvania and under section 2102 (relating to establishment  
22 and purpose).

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

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

27 "Law school dean" or "dean." The administrator in charge of  
28 a law school.

29 "Lobbyist." As defined in 65 Pa.C.S. § 13A03 (relating to  
30 definitions).

1 "Professional association." An organization that represents  
2 the interests of its members who practice a profession. The term  
3 does not include associations that represent lawyers or any  
4 association that does not have a majority of members who are  
5 Commonwealth residents.

6 "Public members." Members of the commission appointed under  
7 section 2103(a) (3) (relating to membership, qualifications and  
8 operation).

9 "Public safety association." An organization that represents  
10 the interests of its members who are engaged in an occupation  
11 responsible for public safety, including law enforcement  
12 agencies, victims' rights groups, fire departments or emergency  
13 medical service providers. The term does not include  
14 associations that represent attorneys or any association that  
15 does not have a majority of members who are Commonwealth  
16 residents.

17 "Secretary." The Secretary of the Commonwealth.

18 "Union." An organization of employees, not dominated or  
19 controlled by any employer or any employer organization, having  
20 among its purposes that of collective bargaining as to the terms  
21 and conditions of employment. The term includes a federation of  
22 such organizations. The term does not include any organization  
23 that does not have a majority of members who are Commonwealth  
24 residents.

25 § 2102. Establishment and purpose.

26 Under section 14 of Article V of the Constitution of  
27 Pennsylvania, there is established an Appellate Court Nominating  
28 Commission within the Executive Department. The purpose of the  
29 commission shall be to nominate individuals for the offices of  
30 justice of the Supreme Court and judge of the Superior Court and

1 Commonwealth Court.

2 § 2103. Membership, qualifications and operation.

3 (a) Composition.--The commission shall be comprised of the  
4 following:

5 (1) Four legislative appointees. The following shall  
6 apply to the members appointed under this paragraph:

7 (i) Appointments are as follows:

8 (A) One individual appointed by the President  
9 pro tempore of the Senate.

10 (B) One individual appointed by the Minority  
11 Leader of the Senate.

12 (C) One individual appointed by the Speaker of  
13 the House of Representatives.

14 (D) One individual appointed by the Minority  
15 Leader of the House of Representatives.

16 (ii) Each of the members appointed under  
17 subparagraph (i) must be members of the bar of the  
18 Supreme Court but may not be justices, judges or  
19 magisterial district judges.

20 (iii) None of the members appointed under  
21 subparagraph (i) may be members of the General Assembly  
22 or their staff or a relative of a member of the General  
23 Assembly. For purposes of this subparagraph, a relative  
24 shall include a spouse, child, mother, father, sister or  
25 brother.

26 (iv) The members shall be residents of at least four  
27 different counties at the time of appointment and during  
28 their terms. If a member becomes a resident of a county  
29 of that of another member appointed by the General  
30 Assembly, the member shall forfeit his or her membership,

1 and the General Assembly shall appoint another member  
2 under this section.

3 (2) Four members appointed by the Governor. The  
4 following shall apply to members appointed under this  
5 paragraph:

6 (i) The members may not be attorneys licensed to  
7 practice law in any state and may not be justices, judges  
8 or magisterial district judges.

9 (ii) The members shall be residents of at least four  
10 different counties at the time of appointment and during  
11 their terms. If a member becomes a resident of a county  
12 of that of another member appointed by the Governor, the  
13 member shall forfeit his or her membership, and the  
14 Governor shall appoint another member under this section.

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

17 (iv) None of the members may be an employee of the  
18 Executive Department or a relative of an employee of the  
19 Executive Department. For purposes of this subparagraph,  
20 a relative shall include a spouse, child, mother, father,  
21 sister or brother.

22 (3) Seven public members. The following shall apply to  
23 members appointed under this paragraph:

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

27 (A) Within 30 days following the effective date  
28 of this section and at least 120 days prior to the  
29 expiration of each term of the law school dean member  
30 of the commission, the secretary shall notify each

1 law school dean that a majority of the law school  
2 deans are to choose from among themselves a law  
3 school dean to serve as a member of the commission.

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

7 (C) As soon as practicable following their  
8 selection, the deans shall send a letter to the  
9 secretary, signed by a majority of the deans,  
10 notifying the secretary of their selection.

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

16 (ii) Six public members, one each selected by bar  
17 associations, business organizations, civic  
18 organizations, professional associations, public safety  
19 organizations and unions. The following shall apply to  
20 members selected under this subparagraph:

21 (A) Within 30 days following the effective date  
22 of this section and at least 120 days prior to the  
23 expiration of each term of the public members of the  
24 commission other than the law school dean member, the  
25 secretary shall transmit a notice for publication to  
26 two newspapers in every county in this Commonwealth  
27 and to the Legislative Reference Bureau for  
28 publication in the Pennsylvania Bulletin that will  
29 alert the organizations described under subparagraph  
30 (ii) that they may apply to be included in the

1 process of appointing members of the commission. The  
2 notice shall describe details of the application  
3 process and shall include a form of application to be  
4 used. The notice and the form of application shall be  
5 posted on the department's Internet website.

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

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

19 (II) A statement as to the specific category  
20 for which the organization wishes to be  
21 considered. An organization may only submit an  
22 application for one of the categories listed  
23 under this subparagraph.

24 (III) A statement of the number of members  
25 of the organization who are Commonwealth  
26 residents as of the date of the application.

27 (IV) Any other information required by the  
28 department. Any person who makes a false  
29 statement on an application submitted under this  
30 subparagraph shall be subject to prosecution

1           under 18 Pa.C.S. §§ 4903 (relating to false  
2           swearing) and 4904 (relating to unsworn  
3           falsification to authorities).

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

16           (D) Within ten days following the last day for  
17           receipt of the names of individuals permitted to be  
18           submitted by organizations under clause (C), the  
19           secretary shall publicly draw lots from each of the  
20           six categories of organizations to determine who  
21           shall serve as the public member of the commission  
22           from each category.

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

27           (b) Qualifications of members.--

28           (1) All members of the commission shall have been a  
29           resident of this Commonwealth for at least one year prior to  
30           the member's appointment.



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

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

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

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

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

13       (5) In making appointments to the commission, each  
14 nominating or appointing authority shall take into  
15 consideration that the commission should include both men and  
16 women, as well as individuals who represent racially and  
17 ethnically diverse backgrounds and who reflect the geographic  
18 diversity of this Commonwealth. Members of the General  
19 Assembly shall not be eligible for appointment to the  
20 commission for a period of one year following their service  
21 in the General Assembly. Members of the Judiciary shall not  
22 be eligible for appointment to the commission for a period of  
23 one year following their service on the Judiciary. Governors  
24 and Lieutenant Governors shall not be eligible for  
25 appointment to the commission for a period of one year  
26 following their service as Governor or Lieutenant Governor.

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

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

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

1           (i) The original members of the commission shall  
2 have the following terms:

3           (A) The legislative appointees shall have the  
4 following terms:

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

7           (II) The appointee of the Speaker of the  
8 House of Representatives shall serve for three  
9 years.

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

12          (IV) The appointee of the Minority Leader of  
13 the House of Representatives shall serve for one  
14 year.

15          (B) The Governor's appointees shall have the  
16 following terms:

17          (I) One appointee shall serve for four  
18 years.

19          (II) One appointee shall serve for three  
20 years.

21          (III) One appointee shall serve for two  
22 years.

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

24          (C) The public members shall serve for four  
25 years.

26          (ii) A member who has served a full term shall not  
27 be permitted to serve on the commission until four years  
28 have elapsed from the end of that member's term.

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

1           full term.

2           (3) Except as provided in this clause, commission  
3 members may only be removed by a majority vote of the other  
4 members of the commission then serving for a violation of the  
5 commission's rules governing the conduct of members. The  
6 commission shall remove a member who, during the course of  
7 the member's term, no longer meets the qualifications of  
8 subsection (b) (1), (2), (3) or (4).

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

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

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

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

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

1 selected, except that the organization that nominated the  
2 commission member whose vacancy is being filled may not  
3 be permitted to participate in the process to select the  
4 immediately succeeding commission member.

5 (d) Operation.--

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

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

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

14 (4) Members shall not be compensated for their service  
15 as members of the commission but shall be reimbursed for  
16 expenses necessarily incurred in the discharge of their  
17 official duties in accordance with Commonwealth policy in  
18 effect for agencies under the Governor's 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 perform an initial  
8 screening of all applications submitted to fill vacancies.

9 (2) The commission shall use the initial screening  
10 process to produce a list containing names of those  
11 applicants who meet the requirements outlined in Article V,  
12 section 14(h) of the Constitution of Pennsylvania, with the  
13 goal of including at least 50% of those applicants who  
14 submitted applications. The applicants on the list shall  
15 undergo further evaluation and consideration by the  
16 commission.

17 (3) Names and biographical information, including  
18 resumes, educational history, employment history and  
19 community service pertaining to the list of applicants who  
20 will undergo further evaluation and consideration as  
21 discussed in paragraph (2), shall be made public. The  
22 commission may conduct interviews of the applicants on this  
23 list and may interview other individuals with knowledge of  
24 the applicants on this list. These interviews shall be  
25 conducted in executive session. The names and biographical  
26 information of the initial applicants who will not be  
27 considered for further evaluation shall remain confidential.

28 (4) The commission may obtain any appropriate or  
29 relevant documentation that relates to the applicant's  
30 suitability to serve as a justice or judge, including

1 information submitted by the public. The commission shall  
2 have the power to subpoena documents from the Disciplinary  
3 Board of the Supreme Court, the Judicial Conduct Board, the  
4 Court of Judicial Discipline, other agencies of the  
5 legislative, executive and judicial branches and local  
6 agencies and authorities.

7 (5) Following its evaluation of the list of applicants  
8 defined in paragraph (2), the commission shall produce a list  
9 of at least eight applicants, provided that eight applicants  
10 are deemed highly qualified, from which the final five  
11 recommended candidates shall be selected. This list of at  
12 least eight applicants shall be made public, and the  
13 applicants on this list shall be interviewed in public  
14 session. The commission may retire to executive session to  
15 conduct further interviews with the applicants, as well as  
16 interviews of others with knowledge of the applicants.

17 (6) The commission shall meet in executive session to  
18 deliberate and vote on the applicants.

19 (c) Selection.--

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

26 (i) Notwithstanding the provisions of section  
27 2103(d)(3), (relating to membership, qualifications and  
28 operation), has received affirmative votes from at least  
29 eight of the members of the commission.

30 (ii) Is a licensed member in good standing of the

1 bar of the Supreme Court.

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

7 (iv) Has demonstrated integrity, judicial  
8 temperament, professional competence and experience and  
9 commitment to the community.

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

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

15 (1) The list of the most qualified applicants shall be  
16 presented to the Governor no later than 30 days prior to the  
17 expected date of the vacancy or, with respect to an  
18 unexpected vacancy, no later than 60 days after the vacancy  
19 occurs.

20 (2) The names of the applicants on the list shall appear  
21 in alphabetical order. The commission shall submit  
22 biographical information regarding each applicant along with  
23 the list of names.

24 (3) Only one list may be provided to the Governor for  
25 each vacancy. If there is more than one vacancy on the same  
26 court, separate lists shall be submitted to the Governor for  
27 each vacancy, and the lists shall contain no more than two  
28 names in common.

29 (4) In the event of death or withdrawal of a person  
30 whose name appears on the list presented to the Governor, the

1 commission shall submit to the Governor an addendum to the  
2 list providing the name of a new applicant selected in the  
3 same manner as the other individuals on the list.

4 (e) Publication.--

5 (1) Immediately following submission to the Governor,  
6 the list shall be submitted to the Senate and shall be made  
7 available to the public.

8 (2) Except for the list under paragraph (1), all  
9 information submitted to or developed by the commission  
10 concerning applicants and all executive session proceedings,  
11 deliberations and votes of the commission shall remain  
12 confidential and shall not be subject to disclosure.

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

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

19 (1) Section 2 and this section shall take effect  
20 immediately.

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