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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 861 Session of  
2009

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INTRODUCED BY EARLL, LEACH, M. WHITE, FOLMER, PICCOLA, ERICKSON,  
FERLO AND RAFFERTY, MAY 11, 2009

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REFERRED TO JUDICIARY, MAY 11, 2009

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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 "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. The term includes a federation of  
12 such organizations.

13 § 2102. Establishment and purpose.

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

20 § 2103. Membership, qualifications and operation.

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

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

25 (i) Appointments are as follows:

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

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

30 (C) One individual appointed by the Speaker of

1 the House of Representatives.

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

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

8 (iii) None of the members appointed under  
9 subparagraph (i) may be members of the General Assembly  
10 or their staff or a relative of a member of the General  
11 Assembly. 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) Only two individuals shall be members of the bar  
17 of the Supreme Court and 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 or a relative of  
25 the Governor. For purposes of this subparagraph, a  
26 relative shall include a wife, husband, child, mother,  
27 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 and unions. The  
24 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 this  
11 subparagraph that desires to participate in the  
12 nomination process shall submit an application to the  
13 secretary. All applications shall be submitted by the  
14 date occurring 30 days after the date of publication  
15 in 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 this subparagraph 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 this subparagraph 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, except as provided in  
29                  subsection (c) (4) (iv).

30                  (b) Qualifications of members.--

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

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

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

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

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

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

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

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

24           (1) (i) Commission members shall serve a term of four  
25 years, except as otherwise provided in this subsection.

26           (ii) The original members appointed by the Governor  
27 shall serve the following terms: one member shall serve  
28 for four years, one member shall serve for three years,  
29 one member shall serve for two years and one member shall  
30 serve for one year.

1           (iii) The original members appointed by the General  
2 Assembly shall serve the following terms: the member  
3 appointed by the President pro tempore of the Senate  
4 shall serve for four years, the member appointed by the  
5 Minority Leader of the Senate shall serve for two years,  
6 the member appointed by the Speaker of the House of  
7 Representatives shall serve for three years and the  
8 member appointed by the Minority Leader of the House of  
9 Representatives shall serve for one year.

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

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

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

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

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

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

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

25 (4) In the event of a vacancy on the commission the  
26 following shall apply:

27           (i) If the vacancy occurs for a reason stated under  
28 paragraph (3), the vacancy shall be filled for the  
29 remainder of the term in the same manner the outgoing  
30 member was initially appointed, except that, if the

1 vacancy is created because a public member selected under  
2 subsection (a) (3) (ii) is removed from the commission, the  
3 organization that appointed the member shall select a new  
4 member.

5 (ii) If a vacancy occurs as a result of the  
6 expiration of the term of a legislative or gubernatorial  
7 appointee, a new member shall be appointed in the same  
8 manner as the member was initially appointed.

9 (iii) If a vacancy occurs as a result of the  
10 expiration of the term of a public member selected under  
11 subsection (a) (3) (i), the vacancy shall be filled in the  
12 same manner as the member was originally selected.

13 (iv) If a vacancy occurs as a result of the  
14 expiration of the term of a public member selected under  
15 subsection (a) (3) (ii), the secretary shall fill the  
16 vacancy in the same manner as the member was initially  
17 selected, except that the public organization that  
18 nominated the commission member whose vacancy is being  
19 filled may not participate in the process to select the  
20 immediately succeeding commission member.

21 (d) Operation.--

22 (1) From among the commission's members, the commission  
23 shall select a chairperson, vice chairperson and other  
24 officers as the commission shall determine.

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

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

30 (4) Members shall not be compensated for their service

1 as members of the commission but shall be reimbursed for  
2 expenses necessarily incurred in the discharge of their  
3 official duties in accordance with Commonwealth policy in  
4 effect for community agencies under the Governor's  
5 jurisdiction.

6 (5) The department shall provide administrative support  
7 for the commission.

8 § 2104. Judicial nominee applicants.

9 (a) Solicitation.--

10 (1) When it is known that a vacancy will occur, the  
11 commission shall publicly announce the vacancy no later than  
12 90 days prior to the expected date of the vacancy.

13 (2) If an unexpected vacancy occurs, the commission  
14 shall publicly announce the vacancy within 30 days following  
15 the vacancy.

16 (3) The commission shall develop the form of application  
17 to be submitted and shall make the form available at the time  
18 a public announcement regarding a vacancy is made.

19 Applications may be submitted by individuals desiring to be  
20 considered for nomination to fill a vacancy commencing with  
21 the date of the public announcement and ending on the date  
22 occurring 30 days later.

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

24 (1) Following the date by which applications are due,  
25 the commission shall review and perform an initial screening  
26 of all applications submitted to fill vacancies.

27 (2) The commission shall use the initial screening  
28 process to result in a list containing names of at least 50%  
29 of those applicants who submitted applications. The  
30 applicants on the list shall undergo further evaluation and

1 consideration by the commission. At this time, information  
2 such as names and biographical information pertaining to the  
3 list of applicants who will undergo further evaluation and  
4 consideration shall be made public.

5 (3) The commission shall interview the applicants and  
6 may interview individuals with knowledge of the applicant.

7 (4) The commission may obtain any appropriate or  
8 relevant documentation that relates to the applicant's  
9 suitability to serve as a justice or judge, including  
10 information submitted by the public.

11 (c) Selection.--

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

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

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

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

29 (iv) Has demonstrated integrity, judicial  
30 temperament, professional competence and experience and

1           commitment to the community.

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

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

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

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

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

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

26           (e) Publication.--

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

30           (2) The biographical information of the applicants shall

1 be made available to the Senate and to the public.

2 (3) All other information submitted to or developed by  
3 the commission concerning applicants, whether or not the  
4 applicants' names appear on the list submitted to the  
5 Governor, and all proceedings, deliberations and votes of the  
6 commission shall remain confidential and shall not be subject  
7 to disclosure under the act of February 14, 2008 (P.L.6,  
8 No.3), known as the Right-to-Know Law.

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

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

14 (1) Section 2 and this section shall take effect  
15 immediately.

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