

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 481

BY SENATOR TRUMP

[Introduced January 30, 2019; Referred to the Committee
on the Judiciary]

1 A BILL to amend and reenact §3-10-3a of the Code of West Virginia, 1931, as amended, relating
 2 to Judicial Vacancy Advisory Commission; and altering the in-state residency
 3 requirements for members of the commission so that no more than two of its appointed
 4 members are residents of the same state senatorial district.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FILLING VACANCIES.

§3-10-3a. Judicial Vacancy Advisory Commission.

1 (a) The Judicial Vacancy Advisory Commission shall assist the Governor in filling judicial
 2 vacancies. The commission shall meet and submit a list of no more than five nor less than two
 3 best qualified persons to the Governor within 90 days of the occurrence of a vacancy, or the
 4 formal announcement of the justice or judge by letter to the Governor of an upcoming resignation
 5 or retirement that will result in the occurrence of a vacancy, in the office of Justice of the Supreme
 6 Court of Appeals, judge of a circuit court or judge of a family court. The Governor shall make the
 7 appointment to fill the vacancy, as required by this article, within 30 days following the receipt of
 8 the list of qualified candidates or within 30 days following the vacancy, whichever occurs later.

9 (b) The commission shall consist of eight appointed members ~~Four public members shall~~
 10 ~~be appointed by the Governor for six-year terms, except for the initial appointments which shall~~
 11 ~~be staggered in accordance with subsection (c) of this section. Four attorney members shall be~~
 12 ~~appointed by the Governor for six-year terms, except as provided in subsection (c) of this section~~
 13 including four public members and four attorney members. The Governor shall appoint attorney
 14 members from a list of nominees provided by the Board of Governors of the West Virginia State
 15 Bar. The Board of Governors of the West Virginia State Bar shall nominate no more than 20 nor
 16 less than 10 best qualified attorneys for appointment to the commission whenever there is a
 17 vacancy in the membership of the commission reserved for attorney members. The commission
 18 shall choose one of its appointed members to serve as chair for a three-year term. No more than
 19 four appointed members of the commission shall belong to the same political party. ~~No more than~~

20 ~~three appointed members of the commission shall be residents of the same congressional district.~~
21 All members of the commission shall be citizens of this state. Public members of the commission
22 may not be licensed to practice law in West Virginia or any other jurisdiction.

23 (c) ~~Of the initial appointments made to the commission, two public members and two~~
24 ~~attorney members shall be appointed for a term ending two years after the effective date of this~~
25 ~~section, one public member and one attorney member shall be appointed for a term ending four~~
26 ~~years after the effective date of this section, and one public member and one attorney member~~
27 ~~shall be appointed for a term ending six years after the effective date of this section. No more~~
28 ~~than two appointed members of the commission may be residents of the same state senatorial~~
29 ~~district, as provided in §1-2-1 of this code at the time of appointment: *Provided*, That the members~~
30 ~~of the commission appointed prior to the enactment of this subsection and serving on the~~
31 ~~commission upon the effective date of this subsection are not disqualified from service for the~~
32 ~~remainder of the member's term based on the residency requirements of this subsection.~~

33 (d) The Governor, or his or her designee, the President of the West Virginia State Bar and
34 the Dean of the West Virginia University College of Law shall serve as *ex officio* members of the
35 commission.

36 (e) Members of the commission shall serve without compensation, except that commission
37 members are entitled to reimbursement of travel and other necessary expenses actually incurred
38 while engaged in official commission activities in accordance with the guidelines of the Travel
39 Management Office of the Department of Administration, or its successor entity. The Governor's
40 Office shall cooperate with the commission to ensure that all resources necessary to carrying out
41 the official duties of the commission are provided, including staff assistance, equipment and
42 materials.

43 (f) The commission shall adopt written policies that formalize and standardize all operating
44 procedures and ethical practices of its members including, but not limited to, procedures for
45 training commission members, publishing notice of judicial vacancies, recruiting qualified

46 individuals for consideration by the commission, receiving applications from qualified individuals,
47 notifying the public of judicial vacancies, notifying state or local groups and organizations of
48 judicial vacancies and soliciting public comment on judicial vacancies. The written policies of the
49 commission are not subject to the provisions of chapter 29A of this code, but shall be filed with
50 the Secretary of State.

51 (g) A majority of the commission plus one shall constitute a quorum to do business.

52 (h) All organizational meetings of the commission shall be open to the public and subject
53 to the requirements of §6-9A-1 *et seq.* of this code. An “organizational meeting” means an initial
54 meeting to discuss the commission's procedures and requirements for a judicial vacancy. The
55 commission shall hold at least one organizational meeting upon the occurrence of a judicial
56 vacancy. All other meetings of the commission are exempt from §6-9A-1 *et seq.* of this code.

57 (i) The commission shall make available to the public copies of any applications and any
58 letters of recommendation written on behalf of any applicants. All other documents or materials
59 created or received by the commission shall be confidential and exempt from the provisions of
60 chapter 29B of this code, except for the list of best-qualified persons or accompanying
61 memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this
62 section, which shall be available for public inspection, and the written policies required to be filed
63 with the Secretary of State in accordance with subsection (f) of this section.

64 (j) The commission shall submit its list of best-qualified persons to the Governor in
65 alphabetical order. A memorandum may accompany the list of best-qualified persons and state
66 facts concerning each of the persons listed. The commission shall make copies of any list of best-
67 qualified persons and accompanying memoranda it submits to the Governor available for public
68 inspection.

NOTE: The purpose of this bill is to provide that no more than two appointed members of the Judicial Vacancy Advisory Commission may be residents of the same state senatorial district.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.