

LEGISLATIVE BILL 251

Approved by the Governor March 29, 1991

Introduced by Kristensen, 37; Warner, 25

AN ACT relating to judicial nominating commissions; to amend sections 24-802, 24-803, 24-806, 24-807, 24-809, and 24-810.01, Reissue Revised Statutes of Nebraska, 1943, and section 24-810, Revised Statutes Supplement, 1990; to change a residency requirement for commission members; to change provisions relating to the nomination and election of certain commission members; to provide for the election of alternate members of commissions; to change certain time limitations; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 24-802, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-802. Except for the member of the Supreme Court, who is required to be a member of a judicial nominating commission, each member of such a commission shall be a resident of the judicial district or area of the state served by such commission except as provided in subsection (2) of section 24-806, in which candidates for the judicial office to be nominated by said commission are required to reside. Except for the Chief Justice, the member of the Supreme Court designated to serve on a particular nominating commission shall not be a member who was originally selected from the district served by such nominating commission.

Sec. 2. That section 24-803, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-803. The term of each member of each existing nominating commission shall terminate thirty days after May 25, 1973. The term of each member of each new nominating commission herein provided for and the manner of his selection shall be as follows:

(1) Within thirty days after May 25, 1973, the Governor shall appoint for each of the various judicial nominating commissions a member of the Supreme Court to

serve from the date of his appointment until January 1, 1975;

(2) Within thirty days after May 25, 1973, the Governor shall appoint for each of the various judicial nominating commissions and the statewide commission four citizen members, with not more than two members from the same political party; two to be designated to serve from the date of their appointment until January 1, 1975; and two to January 1, 1977; and

(3) Within thirty days after May 25, 1973, the lawyers residing in each Supreme Court and district court judicial district and in each area or district served by any other court subject to Article V, section 21, of the Constitution shall commence to nominate and select in the manner prescribed in section 24-806, for each of the various nominating commissions functioning within such district or area, four lawyer members, with not more than two lawyer members from the same political party; two to be designated to serve from the date of their appointment to January 1, 1975; and two to January 1, 1977-

(1) As the term of a member of a judicial nominating commission initially appointed or selected expires, the term of office of each successor member shall be for a period of four years. The Governor shall appoint all successor members of each nominating commission who are Judges of the Supreme Court and citizen members. The lawyers residing in the judicial district or area of the state served by a judicial nominating commission shall select all successor and alternate members of such commission in the manner prescribed in section 24-806. The term of office of an alternate member of a commission shall be for a period of two years. No member of any nominating commission, including the Supreme Court member of any such commission, shall serve more than a total of eight consecutive years as a member of said the commission, and if such member has served for more than six years as a member of such the commission, he or she shall not be eligible for reelection or reappointment.

(2) For purposes of this section and Article V, section 21, of the Constitution of Nebraska, a member of a judicial nominating commission shall be deemed to have served on such commission if he or she was a member of the commission at the time of the publication of the notice required by subsection (2) of section 24-810.

Sec. 3. That section 24-806, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-806. (1) Lawyer members of any judicial nominating commission shall be members of the bar of the State of Nebraska residing and shall reside in the judicial district or area of the state served by said judicial nominating the commission; and not except as provided in subsection (2) of this section. Not more than two lawyer members of each commission shall be registered members of the same political party or category. Nominations for lawyer members of each commission shall be solicited in writing by the Clerk of the Supreme Court from all the lawyers of the district or area served on May 25, 1973, and thereafter on or before September 1 of each even-numbered year. Nominations of lawyer members shall be made in writing, and filed in the office of the Clerk of the Supreme Court within thirty days after May 25, 1973, and thereafter on or before October 1 of each even-numbered year. Each nomination of said a lawyer member shall be accompanied by a written consent of the nominee to serve as a member of said judicial nominating the commission, if elected. The nominations shall be solicited and distributed on the ballot by the Clerk of the Supreme Court from the legally recognized political parties and in such a manner as will permit the final selection to be made within the required political party. At least two qualified lawyers must shall be nominated for each position.

(2) If and if insufficient nominations are made to provide two candidates from the permissible political parties, the Executive Council of the Nebraska State Bar Association, within ten days after the last day for filing nominations, shall nominate additional candidates for said the position so that there shall be two qualified candidates for each position. Such candidates need not reside in the judicial district or area served by such judicial nominating commission.

(3) The Clerk of the Supreme Court shall then mail a ballot, with the names of each nominee, to all members of the bar of Nebraska residing in such the judicial district or area, designating a date at least ten days and not more than fourteen days after the date of such mailing by the Clerk of the Supreme Court when said the ballots will be opened and counted. Said The ballots shall be counted by a board consisting of the Clerk of the Supreme Court, the Secretary of State, and the Attorney General or by alternates designated by any of them to serve in his or her place. The Clerk of the Supreme Court shall insure that said the election is so conducted as to maintain the secrecy of said the ballot

and the validity of the results. The candidate of the required political party receiving the highest number of votes shall be considered as having been elected to the commission. The candidate of the required political party receiving the next highest number of votes shall be considered as having been elected an alternate member of the commission and shall serve as a member of the commission in the event of a lawyer vacancy on the commission created either by resignation or disqualification. In the case of a resignation, such alternate member shall continue to serve as a member of the commission until the term of office of his or her predecessor expires.

(4) In any election where when more than one lawyer member of a judicial nominating commission is to be elected, the nominees shall be submitted without designation of the term. Each voter shall be instructed to vote for as many nominees as there are vacancies to be filled. The candidate receiving the highest vote number of votes shall be considered as having been elected for the longest term. The candidate receiving the next highest number of votes shall be deemed to have been elected for next to the longest term, and; if a third an alternate member is to be elected, the candidate receiving the third highest vote number of votes shall be deemed elected to the shortest term as the alternate member. In case of ties the determination shall be made by lot by the counting board.

Sec. 4. That section 24-807, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-807. Upon the selection of any lawyer member of any judicial nominating commission, the Clerk of the Supreme Court shall promptly certify his or her selection to the Governor and the Secretary of State.

Sec. 5. That section 24-809, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-809. The Judge of the Supreme Court on each judicial nominating commission shall be the chairman of said chairperson of the commission and shall preside at all of its meetings. He or she shall not be entitled to vote. In selecting or rejecting judicial nominees, said the members of the commission shall vote by oral roll call vote. Each candidate must shall receive a majority vote of the voting members of the nominating commission to have his or her name submitted to the Governor.

Sec. 6. That section 24-810, Revised

Statutes Supplement, 1990, be amended to read as follows:

24-810. (1) In the event of the death, retirement, resignation, or removal of any district or county judge, the failure of a district or county judge to be retained in office, or an increase in the number of district or county judgeships authorized by law and except in those judicial districts required to be served by at least one county judge pursuant to section 24-503 and one district court judge pursuant to section 24-301.02, the Supreme Court shall, after holding a public hearing, determine whether a judicial vacancy exists. The determination shall be based upon the Supreme Court's analysis of the caseload, travel time, and other factors necessary to assure efficiency and service. After a determination that a judicial vacancy exists, the declaration of the location of the vacancy shall be made by the Judicial Resources Commission. The Supreme Court shall adopt and promulgate rules and regulations on the procedures to be followed in making a determination of the existence of and declaration of the location of judicial vacancies.

(2) When the location of a district or county judicial vacancy is declared by the Judicial Resources Commission or in the event of a judicial vacancy in any other court, the Clerk of the Supreme Court shall contact the chairperson of the judicial nominating commission relating to such vacancy and shall ascertain from him or her a time and place for the first meeting of such judicial nominating commission, at which time a public hearing will be held. He or she shall thereupon notify each commission member in writing of the time and place of the meeting and shall also cause appropriate notice to be published by various news media of the time and place of the public hearing of the judicial nominating commission and of the interest of the commission in receiving information relating to qualified candidates for the judicial vacancy. Any lawyer meeting the statutory requirements to serve as a judge who is interested in being nominated and appointed to such judgeship shall signify his or her interest by filing the appropriate application with the proper entity at least twenty-one days prior to the public hearing. At least two ten days prior to the public hearing, the chairperson shall release to the public the names of all lawyers who have signified in writing their willingness to serve as a judge if nominated and appointed to applied for such judgeship. 7 and immediately prior to the public hearing the chairperson

shall release the names of any additional lawyers who have so signified. Any member of the public shall be entitled to attend the public hearing to express, either orally or in writing, his or her views concerning candidates for the judicial vacancy.

(3) After the public hearing, the judicial nominating commission shall hold such additional private or confidential meetings as it determines to be necessary. Additional information may be submitted in writing to the ~~judicial~~ nominating commission at any time prior to its selection of qualified candidates to fill the vacancy. The ~~judicial~~ nominating commission shall make such independent investigation and inquiry as it considers necessary or expedient to determine the qualifications of candidates for the judicial vacancy and shall take such action as it deems necessary or expedient to encourage qualified candidates to accept judicial office or nomination for judicial office.

(4) The judicial nominating commission may, before or after the hearing provided for in subsection (2) of this section, institute a search for additional candidates. If additional candidates are obtained, the commission shall hold further public hearings in the same manner as provided in subsection (2) of this section.

(5) The names of candidates shall be submitted to the Governor within ~~sixty~~ ninety days after a declaration of the location of a district or county judicial vacancy by the Judicial Resources Commission or, in the event of a judicial vacancy in any other court, after a judicial vacancy occurred if one public hearing is held and within ~~ninety~~ one hundred twenty days if more than one public hearing is held.

(6) The first public hearing provided for in this section shall be held within ~~forty-five~~ sixty days after the location of a vacancy has been declared or the vacancy occurs, as the case may be.

Sec. 7. That section 24-810.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-810.01. (1) For the purposes of ~~this section and sections 24-802, 24-803, 24-806, 24-807, 24-809, 24-810, 24-811, 24-811-01, 24-801 to 24-812.01, and 48-152-01,~~ members and prospective members of judicial nominating commissions who are registered as independent voters shall be considered to be members of the same political party.

(2) Removal from the State of Nebraska ~~district from which he was selected,~~ or a change in

party registration, shall automatically terminate the tenure of any member of a judicial nominating commission.

Sec. 8. That original sections 24-802, 24-803, 24-806, 24-807, 24-809, and 24-810.01, Reissue Revised Statutes of Nebraska, 1943, and section 24-810, Revised Statutes Supplement, 1990, are repealed.