

Assembly Bill No. 159

CHAPTER 722

An act to amend Section 12011.5 of, and to add Sections 69614.2 and 69615 to, the Government Code, relating to courts.

[Approved by Governor October 14, 2007. Filed with
Secretary of State October 14, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 159, Jones. Courts: judgeships.

(1) Existing law requires the Governor to submit to a designated agency of the State Bar of California the names of all potential appointees or nominees for a vacant judicial office for evaluation of their judicial qualifications. Upon receipt of those names, the State Bar is required to evaluate and determine the qualifications of each candidate for judicial office and to report in confidence to the Governor its recommendation whether the candidate is qualified, as specified.

This bill would require the State Bar to consider legal experience of candidates broadly.

(2) Existing law also requires the Governor, on or before March 1, 2007, and annually on or before each March 1 thereafter, to disclose aggregate statewide demographic data provided by all judicial applicants relative to ethnicity and gender.

This bill would require the Governor to collect and release, on an aggregate statewide basis, demographic data provided by all judicial applicants and judicial appointments or nominations, relative to ethnicity, race, and gender.

(3) Existing law requires the designated agency of the State Bar responsible for evaluation of judicial candidates to collect and release, on an aggregate statewide basis, both statewide demographic data provided by judicial applicants reviewed relative to ethnicity, race, and gender, and the statewide summary of the agency's recommendations by ethnicity, race, and gender.

This bill would require that agency of the State Bar to also collect and release statewide demographic data provided by all judicial applicants reviewed, and the statewide summary of the agency's recommendations, both relative to the areas of legal practice and employment.

(4) Existing law specifies the number of judges for the superior court of each county and for each division of each district of the court of appeal.

This bill would authorize 50 additional judges, upon appropriation by the Legislature in the 2007–08 fiscal year, to be allocated to the various county superior courts, pursuant to uniform criteria approved by the Judicial Council.

This bill would provide that 16 subordinate judicial officer positions in eligible superior courts, as determined by the Judicial Council, shall be converted to judgeships. Beginning in the 2008–09 fiscal year, the bill would provide that, upon subsequent authorization by the Legislature, 146 subordinate judicial officer positions in eligible superior courts, as determined by the Judicial Council, shall be converted to judgeships, upon the occurrence of specified conditions, except that no more than 16 positions may be converted to judgeships in any fiscal year. The bill would define the term “subordinate judicial officer” for purposes of those provisions and would further declare the Legislature’s intent to restore an appropriate balance between subordinate judicial officers and judges in enacting those provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 12011.5 of the Government Code is amended to read:

12011.5. (a) In the event of a vacancy in a judicial office to be filled by appointment of the Governor, or in the event that a declaration of candidacy is not filed by a judge and the Governor is required under subdivision (d) of Section 16 of Article VI of the Constitution to nominate a candidate, the Governor shall first submit to a designated agency of the State Bar of California the names of all potential appointees or nominees for the judicial office for evaluation of their judicial qualifications.

(b) The membership of the designated agency of the State Bar responsible for evaluation of judicial candidates shall consist of attorney members and public members with the ratio of public members to attorney members determined, to the extent practical, by the ratio established in Sections 6013.4 and 6013.5 of the Business and Professions Code. It is the intent of this subdivision that the designated agency of the State Bar responsible for evaluation of judicial candidates shall be broadly representative of the ethnic, gender, and racial diversity of the population of California and composed in accordance with Sections 11140 and 11141 of the Government Code. The further intent of this subdivision is to establish a selection process for membership on the designated agency of the State Bar responsible for evaluation of judicial candidates under which no member of that agency shall provide inappropriate, multiple representation for purposes of this subdivision.

(c) Upon receipt from the Governor of the names of candidates for judicial office and their completed personal data questionnaires, the State Bar shall employ appropriate confidential procedures to evaluate and determine the qualifications of each candidate with regard to his or her ability to discharge the judicial duties of the office to which the appointment or nomination shall be made. Within 90 days of submission by the Governor of the name of a potential appointee for judicial office, the State Bar shall report in confidence to the Governor its recommendation whether the candidate is

exceptionally well qualified, well qualified, qualified, or not qualified and the reasons therefor, and may report, in confidence, other information as the State Bar deems pertinent to the qualifications of the candidate.

(d) In determining the qualifications of a candidate for judicial office, the State Bar shall consider, among other appropriate factors, his or her industry, judicial temperament, honesty, objectivity, community respect, integrity, health, ability, and legal experience. The State Bar shall consider legal experience broadly, including, but not limited to, litigation and nonlitigation experience, legal work for a business or nonprofit entity, experience as a law professor or other academic position, legal work in any of the three branches of government, and legal work in dispute resolution.

(e) The State Bar shall establish and promulgate rules and procedures regarding the investigation of the qualifications of candidates for judicial office by the designated agency. These rules and procedures shall establish appropriate, confidential methods for disclosing to the candidate the subject matter of substantial and credible adverse allegations received regarding the candidate's health, physical or mental condition, or moral turpitude which, unless rebutted, would be determinative of the candidate's unsuitability for judicial office. No provision of this section shall be construed as requiring that any rule or procedure be adopted that permits the disclosure to the candidate of information from which the candidate may infer the source, and no information shall either be disclosed to the candidate nor be obtainable by any process that would jeopardize the confidentiality of communications from persons whose opinion has been sought on the candidate's qualifications.

(f) All communications, written, verbal, or otherwise, of and to the Governor, the Governor's authorized agents or employees, including, but not limited to, the Governor's Legal Affairs Secretary and Appointments Secretary, or of and to the State Bar in furtherance of the purposes of this section are absolutely privileged from disclosure and confidential, and any communication made in the discretion of the Governor or the State Bar with a candidate or person providing information in furtherance of the purposes of this section shall not constitute a waiver of the privilege or a breach of confidentiality.

(g) If the Governor has appointed a person to a trial court who has been found not qualified by the designated agency, the State Bar may make public this fact after due notice to the appointee of its intention to do so, but that notice or disclosure shall not constitute a waiver of privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the appointee.

(h) If the Governor has nominated or appointed a person to the Supreme Court or court of appeal in accordance with subdivision (d) of Section 16 of Article VI of the California Constitution, the Commission on Judicial Appointments may invite, or the State Bar's governing board or its designated agency may submit to the commission its recommendation, and the reasons therefor, but that disclosure shall not constitute a waiver of

privilege or breach of confidentiality with respect to communications of or to the State Bar concerning the qualifications of the nominee or appointee.

(i) No person or entity shall be liable for any injury caused by any act or failure to act, be it negligent, intentional, discretionary, or otherwise, in the furtherance of the purposes of this section, including, but not limited to, providing or receiving any information, making any recommendations, and giving any reasons therefor. As used in this section, the term “State Bar” means its governing board and members thereof, the designated agency of the State Bar and members thereof, and employees and agents of the State Bar.

(j) At any time prior to the receipt of the report from the State Bar specified in subdivision (c) the Governor may withdraw the name of any person submitted to the State Bar for evaluation pursuant to this section.

(k) No candidate for judicial office may be appointed until the State Bar has reported to the Governor pursuant to this section, or until 90 days have elapsed after submission of the candidate’s name to the State Bar, whichever occurs earlier. The requirement of this subdivision shall not apply to any vacancy in judicial office occurring within the 90 days preceding the expiration of the Governor’s term of office, provided, however, that with respect to those vacancies and with respect to nominations pursuant to subdivision (d) of Section 16 of Article VI of the California Constitution, the Governor shall be required to submit any candidate’s name to the State Bar in order to provide an opportunity, if time permits, to make an evaluation.

(l) Nothing in this section shall be construed as imposing an additional requirement for an appointment or nomination to judicial office, nor shall anything in this section be construed as adding any additional qualifications for the office of a judge.

(m) The Board of Governors of the State Bar shall not conduct or participate in, or authorize any committee, agency, employee, or commission of the State Bar to conduct or participate in, any evaluation, review, or report on the qualifications, integrity, diligence, or judicial ability of any specific justice of a court provided for in Section 2 or 3 of Article VI of the California Constitution without prior review and statutory authorization by the Legislature, except an evaluation, review, or report on potential judicial appointees or nominees as authorized by this section.

The provisions of this subdivision shall not be construed to prohibit a member of the State Bar from conducting or participating in an evaluation, review, or report in his or her individual capacity.

(n) (1) Notwithstanding any other provision of this section, on or before March 1, 2007, and on or before March 1 of each year thereafter, all of the following shall occur:

(A) The Governor shall collect and release, on an aggregate statewide basis, all of the following:

(i) Demographic data provided by all judicial applicants relative to ethnicity, race, and gender.

(ii) Demographic data relative to ethnicity, race, and gender as provided by all judicial applicants, both as to those judicial applicants who have been and those who have not been submitted to the State Bar for evaluation.

(iii) Demographic data relative to ethnicity, race, and gender of all judicial appointments or nominations as provided by the judicial appointee or nominee.

(B) The designated agency of the State Bar responsible for evaluation of judicial candidates shall collect and release both of the following on an aggregate statewide basis:

(i) Statewide demographic data provided by all judicial applicants reviewed relative to ethnicity, race, gender, and areas of legal practice and employment.

(ii) The statewide summary of the recommendations of the designated agency of the State Bar by ethnicity, race, gender, and areas of legal practice and employment.

(C) The Administrative Office of the Courts shall collect and release the demographic data provided by justices and judges described in Article VI of the California Constitution relative to ethnicity, race, and gender, by specific jurisdiction.

(2) Any demographic data disclosed or released pursuant to this subdivision shall disclose only aggregated statistical data and shall not identify any individual applicant, justice, or judge.

(o) If any provision of this section other than a provision relating to or providing for confidentiality or privilege from disclosure of any communication or matter, or the application of the provision to any person or circumstances, is held invalid, the remainder of this section to the extent it can be given effect, or the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this section are severable. If any other act of the Legislature conflicts with the provisions of this section, this section shall prevail.

SEC. 2. Section 69614.2 is added to the Government Code, to read:

69614.2. Upon appropriation by the Legislature in the 2007–08 fiscal year, there shall be 50 additional judges allocated to the various county superior courts, pursuant to the uniform criteria described in subdivision (b) of Section 69614, as updated and approved by the Judicial Council on February 23, 2007.

SEC. 3. Section 69615 is added to the Government Code, to read:

69615. (a) It is the intent of the Legislature in enacting this section to restore an appropriate balance between subordinate judicial officers and judges in the trial courts by providing for the conversion, as needed, of subordinate judicial officer positions to judgeships in courts that assign subordinate judicial officers to act as temporary judges. The Legislature finds that these positions must be converted to judgeships in order to ensure that critical case types, including family, probate, and juvenile law matters can be heard by judges.

(b) (1) (A) Sixteen subordinate judicial officer positions in eligible superior courts, as determined by the Judicial Council pursuant to uniform criteria for determining the need for converting existing subordinate judicial officer positions to superior court judgeships, shall be converted to judgeships as set forth in paragraph (2).

(B) Upon subsequent authorization by the Legislature, 146 subordinate judicial officer positions in eligible superior courts, as determined by the Judicial Council pursuant to uniform criteria for determining the need for converting existing subordinate judicial officer positions to superior court judgeships, shall be converted to judgeships as set forth in paragraphs (2) and (3), except that no more than 16 subordinate judicial officer positions may be converted in any fiscal year.

(2) The positions for conversion shall be allocated each fiscal year pursuant to uniform allocation standards to be developed by the Judicial Council for factually determining the relative judicial need for conversion of a subordinate judicial officer position that becomes vacant to a superior court judgeship position.

(3) Beginning in the 2008–09 fiscal year, a subordinate judicial officer position shall be converted to a judgeship when all of the following conditions are met:

(A) A vacancy occurs in a subordinate judicial officer position in an eligible superior court as determined by the uniform allocation standards described in paragraph (2).

(B) The Judicial Council files notice of the vacancies and allocations with the Chair of the Senate Committee on Rules, the Speaker of the Assembly, and the respective chairs of the Senate and Assembly Committees on Judiciary.

(C) The proposed action is ratified by the Legislature, either in the annual Budget Act or other legislative measure.

(4) The provisions of Section 12011.5 of the Government Code shall apply to any appointment to a superior court judgeship converted from a subordinate judicial officer position.

(c) For purposes of this section, “subordinate judicial officer” means an officer appointed under the authority of Section 22 of Article VI of the California Constitution. This section shall not apply to a subordinate judicial officer established by Section 4251 of the Family Code.

(d) It is the intent of the Legislature that no subordinate judicial officer shall involuntarily lose his or her position solely due to operation of this section. This section does not change the employment relationship between subordinate judicial officers and the trial courts established by law.

(e) This section does not limit the authority of the Governor to appoint a person to fill a vacancy pursuant to subdivision (c) of Section 16 of Article VI of the California Constitution.

(f) This section does not entitle a court to an increase in funding.

(g) The operation of this section shall neither increase nor decrease the number of judicial and subordinate judicial officer positions and court support positions for which a county is responsible by law.

O