

ASSEMBLY BILL

No. 126

Introduced by Assembly Member Davis

January 10, 2011

An act to amend Section 12011.5 of the Government Code, relating to judicial appointments.

LEGISLATIVE COUNSEL'S DIGEST

AB 126, as introduced, Davis. Courts: judicial appointments.

The California Constitution requires the Governor to fill judicial office vacancies by appointment and to nominate candidates for election to the California Supreme Court and the Courts of Appeal, as specified.

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 judicial office for evaluation of their judicial qualifications. Existing law provides that the membership of the designated agency shall consist of attorney members and public members, and be broadly representative of the ethnic, gender, and racial diversity of the population of California, as specified. Existing law also requires, on or before March 1 of each year, the Governor, the designated agency, and the Administrative Office of the Courts to collect and release specified demographic data relative to the ethnicity, race, and gender of judicial applicants or judges, as specified.

This bill would require the Governor to collect and release, on a continuous basis by posting on his or her official Internet Web site, the names of all persons who have been provided judicial application materials or related documentation on one or more judicial applicants by the Governor or his or her representatives to assist in the decision whether to submit an application to the State Bar for evaluation or

whether the applicant should be appointed after he or she has been evaluated by the State Bar, other than employees of the Governor. The bill also would require each member of the designated agency of the State Bar responsible for evaluation of judicial candidates to complete a minimum of 2 hours of training in the areas of fairness and bias in the judicial appointments process on an annual basis. The bill would revise the provision requiring the Governor, the designated agency, and the Administrative Office of the Courts to collect and release specified demographic data annually, as described above, to specifically require that the information be for the prior calendar year. The bill would also require, with respect to the collection and release of demographic data, the State Bar and the Administrative Office of the Courts to use the ethnic and racial categories designated and used by the Governor in the March 1, 2008, report.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 12011.5 of the Government Code is
2 amended to read:
3 12011.5. (a) In the event of a vacancy in a judicial office to
4 be filled by appointment of the Governor, or in the event that a
5 declaration of candidacy is not filed by a judge and the Governor
6 is required under subdivision (d) of Section 16 of Article VI of the
7 Constitution to nominate a candidate, the Governor shall first
8 submit to a designated agency of the State Bar of California the
9 names of all potential appointees or nominees for the judicial office
10 for evaluation of their judicial qualifications.
11 (b) The membership of the designated agency of the State Bar
12 responsible for evaluation of judicial candidates shall consist of
13 attorney members and public members with the ratio of public
14 members to attorney members determined, to the extent practical,
15 by the ratio established in Sections 6013.4 and 6013.5 of the
16 Business and Professions Code. It is the intent of this subdivision
17 that the designated agency of the State Bar responsible for
18 evaluation of judicial candidates shall be broadly representative
19 of the ethnic, gender, and racial diversity of the population of
20 California and composed in accordance with Sections 11140 and
21 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. *Each member of that agency shall complete a minimum of two hours of training in the areas of fairness and bias in the judicial appointments process on an annual basis.*

(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

1 which the candidate may infer the source, and no information shall
2 either be disclosed to the candidate nor be obtainable by any
3 process that would jeopardize the confidentiality of
4 communications from persons whose opinion has been sought on
5 the candidate's qualifications.

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

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

23 (h) If the Governor has nominated or appointed a person to the
24 Supreme Court or court of appeal in accordance with subdivision
25 (d) of Section 16 of Article VI of the California Constitution, the
26 Commission on Judicial Appointments may invite, or the State
27 Bar's governing board or its designated agency may submit to the
28 commission its recommendation, and the reasons therefor, but that
29 disclosure shall not constitute a waiver of privilege or breach of
30 confidentiality with respect to communications of or to the State
31 Bar concerning the qualifications of the nominee or appointee.

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

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

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

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

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

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

33 (n) (1) Notwithstanding any other provision of this section, on
34 or before March 1, 2007, and on or before March 1 of each year
35 thereafter *for the prior calendar year*, all of the following shall
36 occur:

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

39 (i) Demographic data provided by all judicial applicants relative
40 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.

(3) *The State Bar and the Administrative Office of the Courts shall use the ethnic and racial categories designated and used by the Governor in the March 1, 2008, report.*

(o) *The Governor shall collect and release, on a continuous basis by posting on his or her official Internet Web site, the names of all persons who have been provided judicial application materials or related documentation on one or more judicial applicants by the Governor or his or her representatives to assist in the decision whether to submit an application to the State Bar for evaluation or whether the applicant should be appointed after he or she has been evaluated by the State Bar, other than employees of the Governor, including, but not limited to, the Governor's Legal Affairs Secretary and Judicial Appointments Secretary.*

~~(t)~~

(p) If any provision of this section other than a provision relating to or providing for confidentiality or privilege from disclosure of

1 any communication or matter, or the application of the provision
2 to any person or circumstances, is held invalid, the remainder of
3 this section to the extent it can be given effect, or the application
4 of the provision to persons or circumstances other than those as
5 to which it is held invalid, shall not be affected thereby, and to this
6 extent the provisions of this section are severable. If any other act
7 of the Legislature conflicts with the provisions of this section, this
8 section shall prevail.

O