

AMENDED IN ASSEMBLY MAY 16, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 126

Introduced by Assembly Member Davis
(Coauthor: Assembly Member Carter)

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 amended, 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 to whom the Governor or the Governor’s representatives have provided judicial application materials or related documentation on one or more candidates for judicial office for the purpose of determining whether the candidate’s application should be submitted to the State Bar for evaluation or whether the candidate should be appointed after he or she has been evaluated by the State Bar. The bill would exempt from disclosure the names of 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 specified ethnic and racial categories designated and used, as those categories are defined by the United States Census Bureau for the 2010 Census, and each year thereafter~~ for reporting purposes.

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,

1 by the ratio established in Sections 6013.4 and 6013.5 of the
2 Business and Professions Code. It is the intent of this subdivision
3 that the designated agency of the State Bar responsible for
4 evaluation of judicial candidates shall be broadly representative
5 of the ethnic, gender, and racial diversity of the population of
6 California and composed in accordance with Sections 11140 and
7 11141. The further intent of this subdivision is to establish a
8 selection process for membership on the designated agency of the
9 State Bar responsible for evaluation of judicial candidates under
10 which no member of that agency shall provide inappropriate,
11 multiple representation for purposes of this subdivision. Each
12 member of that agency shall complete a minimum of two hours
13 of training in the areas of fairness and bias in the judicial
14 appointments process on an annual basis.

15 (c) Upon receipt from the Governor of the names of candidates
16 for judicial office and their completed personal data questionnaires,
17 the State Bar shall employ appropriate confidential procedures to
18 evaluate and determine the qualifications of each candidate with
19 regard to his or her ability to discharge the judicial duties of the
20 office to which the appointment or nomination shall be made.
21 Within 90 days of submission by the Governor of the name of a
22 potential appointee for judicial office, the State Bar shall report in
23 confidence to the Governor its recommendation whether the
24 candidate is exceptionally well qualified, well qualified, qualified,
25 or not qualified and the reasons therefor, and may report, in
26 confidence, other information as the State Bar deems pertinent to
27 the qualifications of the candidate.

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

37 (e) The State Bar shall establish and promulgate rules and
38 procedures regarding the investigation of the qualifications of
39 candidates for judicial office by the designated agency. These rules
40 and procedures shall establish appropriate, confidential methods

1 for disclosing to the candidate the subject matter of substantial and
2 credible adverse allegations received regarding the candidate's
3 health, physical or mental condition, or moral turpitude which,
4 unless rebutted, would be determinative of the candidate's
5 unsuitability for judicial office. No provision of this section shall
6 be construed as requiring that any rule or procedure be adopted
7 that permits the disclosure to the candidate of information from
8 which the candidate may infer the source, and no information shall
9 either be disclosed to the candidate nor be obtainable by any
10 process that would jeopardize the confidentiality of
11 communications from persons whose opinion has been sought on
12 the candidate's qualifications.

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

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

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

39 (i) No person or entity shall be liable for any injury caused by
40 any act or failure to act, be it negligent, intentional, discretionary,

1 or otherwise, in the furtherance of the purposes of this section,
2 including, but not limited to, providing or receiving any
3 information, making any recommendations, and giving any reasons
4 therefor. As used in this section, the term “State Bar” means its
5 governing board and members thereof, the designated agency of
6 the State Bar and members thereof, and employees and agents of
7 the State Bar.

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

12 (k) A candidate for judicial office shall not be appointed until
13 the State Bar has reported to the Governor pursuant to this section,
14 or until 90 days have elapsed after submission of the candidate’s
15 name to the State Bar, whichever occurs earlier. The requirement
16 of this subdivision shall not apply to any vacancy in judicial office
17 occurring within the 90 days preceding the expiration of the
18 Governor’s term of office, provided, however, that with respect
19 to those vacancies and with respect to nominations pursuant to
20 subdivision (d) of Section 16 of Article VI of the California
21 Constitution, the Governor shall be required to submit any
22 candidate’s name to the State Bar in order to provide an
23 opportunity, if time permits, to make an evaluation.

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (3) The State Bar and the Administrative Office of the Courts
33 shall use the *following* ethnic and racial categories designated and
34 ~~used~~ *categories: American Indian or Alaska Native, Asian, Black*
35 *or African American, Hispanic or Latino, Native Hawaiian or*
36 *other Pacific Islander, White, some other race, and more than one*
37 *race, as those categories are defined by the United States Census*
38 ~~Bureau for the 2010-Census, and each year thereafter~~ *Census* for
39 reporting purposes.

1 (o) The Governor shall collect and release, on a continuous basis
2 by posting on his or her official Internet Web site, the names of
3 all persons to whom the Governor or the Governor's representatives
4 have provided judicial application materials or related
5 documentation on one or more candidates for judicial office for
6 the purpose of determining whether the candidate's application
7 should be submitted to the State Bar for evaluation or whether the
8 candidate should be appointed after he or she has been evaluated
9 by the State Bar. This subdivision shall not apply to employees of
10 the Governor, including, but not limited to, the Governor's Legal
11 Affairs Secretary and Judicial Appointments Secretary.

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

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