

AMENDED IN SENATE AUGUST 25, 2011

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 60 minutes of training in the areas of fairness and bias in the judicial appointments process on an annual basis at an orientation for new members, and an additional 60 minutes of that training during his or her service on that agency if the member serves more than one term. 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 specified ethnic and racial categories, as those categories are defined by the United States Census Bureau for the 2010 Census for reporting purposes.~~

This bill would incorporate additional changes in Section 12011.5 of the Government Code proposed in SB 182, that would become operative only if SB 182 and this bill are both chaptered and become effective on or before January 1, 2012, and this bill is chaptered last.

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

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. 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~~ *the designated agency of the State Bar responsible for evaluation of judicial candidates* shall complete a minimum of ~~two hours~~ *60 minutes* of training in the areas of fairness and bias in the judicial appointments process ~~on an annual basis at an orientation for new members. If the member serves more than one term, the member shall complete an additional 60 minutes of that training during the member's service on the designated agency of the State Bar responsible for evaluation of judicial candidates.~~

(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

1 respect to communications of or to the State Bar concerning the
2 qualifications of the appointee.

3 (h) If the Governor has nominated or appointed a person to the
4 Supreme Court or court of appeal in accordance with subdivision
5 (d) of Section 16 of Article VI of the California Constitution, the
6 Commission on Judicial Appointments may invite, or the State
7 Bar's governing board or its designated agency may submit to the
8 commission its recommendation, and the reasons therefor, but that
9 disclosure shall not constitute a waiver of privilege or breach of
10 confidentiality with respect to communications of or to the State
11 Bar concerning the qualifications of the nominee or appointee.

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

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

25 (k) A candidate for judicial office shall not be appointed until
26 the State Bar has reported to the Governor pursuant to this section,
27 or until 90 days have elapsed after submission of the candidate's
28 name to the State Bar, whichever occurs earlier. The requirement
29 of this subdivision shall not apply to any vacancy in judicial office
30 occurring within the 90 days preceding the expiration of the
31 Governor's term of office, provided, however, that with respect
32 to those vacancies and with respect to nominations pursuant to
33 subdivision (d) of Section 16 of Article VI of the California
34 Constitution, the Governor shall be required to submit any
35 candidate's name to the State Bar in order to provide an
36 opportunity, if time permits, to make an evaluation.

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

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

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

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

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

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

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

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

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

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

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

37 (C) The Administrative Office of the Courts shall collect and
38 release the demographic data provided by justices and judges
39 described in Article VI of the California Constitution relative to
40 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 following ethnic and racial categories: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or other Pacific Islander, White, some other race, and more than one race, as those categories are defined by the United States Census Bureau for the 2010 Census for reporting purposes.

~~(c) 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 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. This subdivision shall not apply to employees of the Governor, including, but not limited to, the Governor's Legal Affairs Secretary and Judicial Appointments Secretary.~~

(c) Members of judicial selection advisory committees are encouraged to recommend candidates from diverse backgrounds and cultures reflecting the demographics of California.

(p) 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. 1.5. 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

1 Constitution to nominate a candidate, the Governor shall first
2 submit to a designated agency of the State Bar of California the
3 names of all potential appointees or nominees for the judicial office
4 for evaluation of their judicial qualifications.

5 (b) The membership of the designated agency of the State Bar
6 responsible for evaluation of judicial candidates shall consist of
7 attorney members and public members with the ratio of public
8 members to attorney members determined, to the extent practical,
9 by the ratio established in Sections 6013.4 and 6013.5 of the
10 Business and Professions Code. It is the intent of this subdivision
11 that the designated agency of the State Bar responsible for
12 evaluation of judicial candidates shall be broadly representative
13 of the ethnic, gender, and racial diversity of the population of
14 California and composed in accordance with Sections 11140 and
15 11141 ~~of the Government Code~~. The further intent of this
16 subdivision is to establish a selection process for membership on
17 the designated agency of the State Bar responsible for evaluation
18 of judicial candidates under which no member of that agency shall
19 provide inappropriate, multiple representation for purposes of this
20 subdivision. *Each member of the designated agency of the State*
21 *Bar responsible for evaluation of judicial candidates shall complete*
22 *a minimum of 60 minutes of training in the areas of fairness and*
23 *bias in the judicial appointments process at an orientation for new*
24 *members. If the member serves more than one term, the member*
25 *shall complete an additional 60 minutes of that training during*
26 *the member's service on the designated agency of the State Bar*
27 *responsible for evaluation of judicial candidates.*

28 (c) Upon receipt from the Governor of the names of candidates
29 for judicial office and their completed personal data questionnaires,
30 the State Bar shall employ appropriate confidential procedures to
31 evaluate and determine the qualifications of each candidate with
32 regard to his or her ability to discharge the judicial duties of the
33 office to which the appointment or nomination shall be made.
34 Within 90 days of submission by the Governor of the name of a
35 potential appointee for judicial office, the State Bar shall report in
36 confidence to the Governor its recommendation whether the
37 candidate is exceptionally well qualified, well qualified, qualified,
38 or not qualified and the reasons therefor, and may report, in
39 confidence, other information as the State Bar deems pertinent to
40 the qualifications of the candidate.

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

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

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

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

1 respect to communications of or to the State Bar concerning the
2 qualifications of the appointee.

3 (h) If the Governor has nominated or appointed a person to the
4 Supreme Court or court of appeal in accordance with subdivision
5 (d) of Section 16 of Article VI of the California Constitution, the
6 Commission on Judicial Appointments may invite, or the State
7 Bar's governing board or its designated agency may submit to the
8 commission its recommendation, and the reasons therefor, but that
9 disclosure shall not constitute a waiver of privilege or breach of
10 confidentiality with respect to communications of or to the State
11 Bar concerning the qualifications of the nominee or appointee.

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

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

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

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

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

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

13 (n) (1) Notwithstanding any other provision of this section, ~~on~~
14 ~~or before March 1, 2007, and but subject to paragraph (2), on or~~
15 ~~before March 1 of each year thereafter for the prior calendar year,~~
16 all of the following shall occur:

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

19 (i) Demographic data provided by all judicial applicants relative
20 to ethnicity, race, ~~and~~ gender, *gender identity, and sexual*
21 *orientation*.

22 (ii) Demographic data relative to ethnicity, race, ~~and~~ gender,
23 *gender identity, and sexual orientation* as provided by all judicial
24 applicants, both as to those judicial applicants who have been and
25 those who have not been submitted to the State Bar for evaluation.

26 (iii) Demographic data relative to ethnicity, race, ~~and~~ gender,
27 *gender identity, and sexual orientation* of all judicial appointments
28 or nominations, as provided by the judicial appointee or nominee.

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

32 (i) Statewide demographic data provided by all judicial
33 applicants reviewed relative to ethnicity, race, gender, *gender*
34 *identity, sexual orientation*, and areas of legal practice and
35 employment.

36 (ii) The statewide summary of the recommendations of the
37 designated agency of the State Bar by ethnicity, race, gender,
38 *gender identity, sexual orientation*, and areas of legal practice and
39 employment.

1 (C) The Administrative Office of the Courts shall collect and
2 release the demographic data provided by justices and judges
3 described in Article VI of the California Constitution relative to
4 ethnicity, race, ~~and~~ gender, *gender identity, and sexual orientation*
5 by specific jurisdiction.

6 (2) *For purposes of subparagraph (A) of paragraph (1), in the*
7 *year following a general election or recall election that will result*
8 *in a new Governor taking office prior to March 1, the departing*
9 *Governor shall provide all of the demographic data collected for*
10 *the year by that Governor pursuant to this subdivision to the*
11 *incoming Governor. The incoming Governor shall then be*
12 *responsible for releasing the provided demographic data, and the*
13 *demographic data collected by that incoming Governor, if any,*
14 *prior to the March 1 deadline imposed pursuant to this subdivision.*

15 ~~(2)~~

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

19 (4) *Any demographic data disclosed or released pursuant to*
20 *this subdivision shall also indicate the percentage of respondents*
21 *who declined to respond.*

22 (5) *The State Bar and the Administrative Office of the Courts*
23 *shall use the following ethnic and racial categories: American*
24 *Indian or Alaska Native, Asian, Black or African American,*
25 *Hispanic or Latino, Native Hawaiian or other Pacific Islander,*
26 *White, some other race, and more than one race, as those*
27 *categories are defined by the United States Census Bureau for the*
28 *2010 Census for reporting purposes.*

29 (o) *Members of judicial selection advisory committees are*
30 *encouraged to recommend candidates from diverse backgrounds*
31 *and cultures reflecting the demographics of California.*

32 ~~(p)~~

33 (p) If any provision of this section other than a provision relating
34 to or providing for confidentiality or privilege from disclosure of
35 any communication or matter, or the application of the provision
36 to any person or circumstances, is held invalid, the remainder of
37 this section to the extent it can be given effect, or the application
38 of the provision to persons or circumstances other than those as
39 to which it is held invalid, shall not be affected thereby, and to this
40 extent the provisions of this section are severable. If any other act

1 of the Legislature conflicts with the provisions of this section, this
2 section shall prevail.

3 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
4 *Section 12011.5 of the Government Code proposed by both this*
5 *bill and Senate Bill 182. It shall only become operative if (1) both*
6 *bills are enacted and become effective on or before January 1,*
7 *2012, (2) each bill amends Section 12011.5 of the Government*
8 *Code, and (3) this bill is enacted after Senate Bill 182, in which*
9 *case Section 1 of this bill shall not become operative.*

O