

AMENDED IN ASSEMBLY MAY 14, 2013  
AMENDED IN ASSEMBLY APRIL 30, 2013  
AMENDED IN ASSEMBLY APRIL 18, 2013  
AMENDED IN ASSEMBLY MARCH 14, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1005**

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**Introduced by Assembly Member Alejo**  
**(Coauthor: Assembly Member Achadjian)**  
(Coauthor: Senator Corbett)

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1005, as amended, Alejo. Judicial appointments: demographic data.

Existing law requires the Governor, the designated agency of the State Bar responsible for the evaluation of judicial candidates, and the Administrative Office of the Courts to annually collect demographic data relating to judicial applicants, judicial appointees or nominees, judicial candidates, and justices and judges, as specified, relative to ethnicity, race, and gender. These entities are required to release the demographic data on or before March 1 of each year.

This bill would, *beginning on January 1, 2014*, expand these provisions to include the collection ~~and release~~ of demographic data relative to physical disability, mental disability, and veteran status, as

defined, and would require the data to be released beginning in 2015, as specified.

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 California Constitution to nominate a candidate, the Governor  
8 shall first submit to a designated agency of the State Bar of  
9 California the names of all potential appointees or nominees for  
10 the judicial office 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 Section 6013.5 of the Business and  
16 Professions Code. It is the intent of this subdivision that the  
17 designated agency of the State Bar responsible for evaluation of  
18 judicial candidates shall be broadly representative of the ethnic,  
19 gender, and racial diversity of the population of California and  
20 composed in accordance with Sections 11140 and 11141. The  
21 further intent of this subdivision is to establish a selection process  
22 for membership on the designated agency of the State Bar  
23 responsible for evaluation of judicial candidates under which no  
24 member of that agency shall provide inappropriate, multiple  
25 representation for purposes of this subdivision. Each member of  
26 the designated agency of the State Bar responsible for evaluation  
27 of judicial candidates shall complete a minimum of 60 minutes of  
28 training in the areas of fairness and bias in the judicial  
29 appointments process at an orientation for new members. If the  
30 member serves more than one term, the member shall complete  
31 an additional 60 minutes of that training during the member's  
32 service on the designated agency of the State Bar responsible for  
33 evaluation of judicial candidates.

1 (c) Upon receipt from the Governor of the names of candidates  
2 for judicial office and their completed personal data questionnaires,  
3 the State Bar shall employ appropriate confidential procedures to  
4 evaluate and determine the qualifications of each candidate with  
5 regard to his or her ability to discharge the judicial duties of the  
6 office to which the appointment or nomination shall be made.  
7 Within 90 days of submission by the Governor of the name of a  
8 potential appointee for judicial office, the State Bar shall report in  
9 confidence to the Governor its recommendation whether the  
10 candidate is exceptionally well qualified, well qualified, qualified,  
11 or not qualified and the reasons therefor, and may report, in  
12 confidence, other information as the State Bar deems pertinent to  
13 the qualifications of the candidate.

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

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

39 (f) All communications, written, verbal, or otherwise, of and to  
40 the Governor, the Governor's authorized agents or employees,

1 including, but not limited to, the Governor’s Legal Affairs  
2 Secretary and Appointments Secretary, or of and to the State Bar  
3 in furtherance of the purposes of this section are absolutely  
4 privileged from disclosure and confidential, and any  
5 communication made in the discretion of the Governor or the State  
6 Bar with a candidate or person providing information in furtherance  
7 of the purposes of this section shall not constitute a waiver of the  
8 privilege or a breach of confidentiality.

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

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

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

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

38 (k) A candidate for judicial office shall not be appointed until  
39 the State Bar has reported to the Governor pursuant to this section,  
40 or until 90 days have elapsed after submission of the candidate’s

1 name to the State Bar, whichever occurs earlier. The requirement  
2 of this subdivision shall not apply to any vacancy in judicial office  
3 occurring within the 90 days preceding the expiration of the  
4 Governor's term of office, provided, however, that with respect  
5 to those vacancies and with respect to nominations pursuant to  
6 subdivision (d) of Section 16 of Article VI of the California  
7 Constitution, the Governor shall be required to submit any  
8 candidate's name to the State Bar in order to provide an  
9 opportunity, if time permits, to make an evaluation.

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

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

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

26 (n) (1) Notwithstanding any other provision of this section, but  
27 subject to paragraph (2), on or before March 1 of each year for the  
28 prior calendar year, all of the following shall occur:

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

31 (i) Demographic data provided by all judicial applicants relative  
32 to ethnicity, race, physical disability, as defined in subdivision (l)  
33 of Section 12926, mental disability, as defined in subdivision (j)  
34 of Section 12926, veteran status, as defined in Section 101(2) of  
35 Title 38 of the United States Code, gender, gender identity, and  
36 sexual orientation.

37 (ii) Demographic data relative to ethnicity, race, physical  
38 disability, as defined in subdivision (l) of Section 12926, mental  
39 disability, as defined in subdivision (j) of Section 12926, veteran  
40 status, as defined in Section 101(2) of Title 38 of the United States

1 Code, gender, gender identity, and sexual orientation as provided  
2 by all judicial applicants, both as to those judicial applicants who  
3 have been and those who have not been submitted to the State Bar  
4 for evaluation.

5 (iii) Demographic data relative to ethnicity, race, physical  
6 disability, as defined in subdivision (l) of Section 12926, mental  
7 disability, as defined in subdivision (j) of Section 12926, veteran  
8 status, as defined in Section 101(2) of Title 38 of the United States  
9 Code, gender, gender identity, and sexual orientation of all judicial  
10 appointments or nominations as provided by the judicial appointee  
11 or nominee.

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

15 (i) Statewide demographic data provided by all judicial  
16 applicants reviewed relative to ethnicity, race, physical disability,  
17 as defined in subdivision (l) of Section 12926, mental disability,  
18 as defined in subdivision (j) of Section 12926, veteran status, as  
19 defined in Section 101(2) of Title 38 of the United States Code,  
20 gender, gender identity, sexual orientation, and areas of legal  
21 practice and employment.

22 (ii) The statewide summary of the recommendations of the  
23 designated agency of the State Bar by ethnicity, race, physical  
24 disability, as defined in subdivision (l) of Section 12926, mental  
25 disability, as defined in subdivision (j) of Section 12926, veteran  
26 status, as defined in Section 101(2) of Title 38 of the United States  
27 Code, gender, gender identity, sexual orientation, and areas of  
28 legal practice and employment.

29 (C) The Administrative Office of the Courts shall collect and  
30 release the demographic data provided by justices and judges  
31 described in Article VI of the California Constitution relative to  
32 ethnicity, race, physical disability, as defined in subdivision (l) of  
33 Section 12926, mental disability, as defined in subdivision (j) of  
34 Section 12926, veteran status, as defined in Section 101(2) of Title  
35 38 of the United States Code, gender, gender identity, and sexual  
36 orientation by specific jurisdiction.

37 (2) For purposes of subparagraph (A) of paragraph (1), in the  
38 year following a general election or recall election that will result  
39 in a new Governor taking office prior to March 1, the departing  
40 Governor shall provide all of the demographic data collected for

1 the year by that Governor pursuant to this subdivision to the  
2 incoming Governor. The incoming Governor shall then be  
3 responsible for releasing the provided demographic data, and the  
4 demographic data collected by that incoming Governor, if any,  
5 prior to the March 1 deadline imposed pursuant to this subdivision.

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

9 (4) The State Bar and the Administrative Office of the Courts  
10 shall use the following ethnic and racial categories: American  
11 Indian or Alaska Native, Asian, Black or African American,  
12 Hispanic or Latino, Native Hawaiian or other Pacific Islander,  
13 White, some other race, and more than one race, as those categories  
14 are defined by the United States Census Bureau for the 2010  
15 Census for reporting purposes.

16 (5) Any demographic data disclosed or released pursuant to this  
17 subdivision shall also indicate the percentage of respondents who  
18 declined to respond.

19 (6) *For purposes of this subdivision, the Governor, the State*  
20 *Bar, and the Administrative Office of the Courts shall collect*  
21 *demographic data relative to physical disability, mental disability,*  
22 *or veteran status beginning on January 1, 2014, and shall release*  
23 *this data beginning in 2015, pursuant to paragraph (1).*

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

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