

AMENDED IN SENATE JUNE 3, 2013  
AMENDED IN ASSEMBLY MAY 16, 2013  
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. *Existing law encourages members of judicial selection advisory committees to*

*recommend candidates from diverse backgrounds and cultures, as specified.*

This bill would expand these provisions to include the collection of demographic data relative to ~~physical disability, mental disability,~~ *disability* and veteran status, as defined. The bill would provide that the collection of this demographic data would be required only for judicial applicants, candidates, appointees, nominees, justices, and judges who apply, or are reviewed, appointed, nominated, or elected, on or after January 1, 2014, and would require the release of this data to begin in 2015. *The bill would encourage the Governor and members of judicial selection advisory committees to give particular consideration to candidates from diverse backgrounds and cultures, 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

1 member of that agency shall provide inappropriate, multiple  
2 representation for purposes of this subdivision. Each member of  
3 the designated agency of the State Bar responsible for evaluation  
4 of judicial candidates shall complete a minimum of 60 minutes of  
5 training in the areas of fairness and bias in the judicial  
6 appointments process at an orientation for new members. If the  
7 member serves more than one term, the member shall complete  
8 an additional 60 minutes of that training during the member's  
9 service on the designated agency of the State Bar responsible for  
10 evaluation of judicial candidates.

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

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

33 (e) The State Bar shall establish and promulgate rules and  
34 procedures regarding the investigation of the qualifications of  
35 candidates for judicial office by the designated agency. These rules  
36 and procedures shall establish appropriate, confidential methods  
37 for disclosing to the candidate the subject matter of substantial and  
38 credible adverse allegations received regarding the candidate's  
39 health, physical or mental condition, or moral turpitude which,  
40 unless rebutted, would be determinative of the candidate's

1 unsuitability for judicial office. No provision of this section shall  
2 be construed as requiring that any rule or procedure be adopted  
3 that permits the disclosure to the candidate of information from  
4 which the candidate may infer the source, and no information shall  
5 either be disclosed to the candidate nor be obtainable by any  
6 process that would jeopardize the confidentiality of  
7 communications from persons whose opinion has been sought on  
8 the candidate’s qualifications.

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

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

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

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

1 governing board and members thereof, the designated agency of  
2 the State Bar and members thereof, and employees and agents of  
3 the State Bar.

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

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

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

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

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

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

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

1 (i) Demographic data provided by all judicial applicants relative  
2 to ethnicity, race, ~~physical disability, as defined in subdivision (l)~~  
3 ~~of Section 12926, mental disability, as defined in subdivision (j)~~  
4 ~~of Section 12926, veteran status, as defined in Section 101(2) of~~  
5 ~~Title 38 of the United States Code, gender, gender identity, and~~  
6 ~~sexual orientation.~~

7 (ii) Demographic data relative to ethnicity, race, ~~physical~~  
8 ~~disability, as defined in subdivision (l) of Section 12926, mental~~  
9 ~~disability, as defined in subdivision (j) of Section 12926, veteran~~  
10 ~~status, as defined in Section 101(2) of Title 38 of the United States~~  
11 ~~Code, gender, gender identity, and sexual orientation as provided~~  
12 ~~by all judicial applicants, both as to those judicial applicants who~~  
13 ~~have been and those who have not been submitted to the State Bar~~  
14 ~~for evaluation.~~

15 (iii) Demographic data relative to ethnicity, race, ~~physical~~  
16 ~~disability, as defined in subdivision (l) of Section 12926, mental~~  
17 ~~disability, as defined in subdivision (j) of Section 12926, veteran~~  
18 ~~status, as defined in Section 101(2) of Title 38 of the United States~~  
19 ~~Code, gender, gender identity, and sexual orientation of all judicial~~  
20 ~~appointments or nominations as provided by the judicial appointee~~  
21 ~~or nominee.~~

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

25 (i) Statewide demographic data provided by all judicial  
26 applicants reviewed relative to ethnicity, race, ~~physical~~  
27 ~~disability, as defined in subdivision (l) of Section 12926, mental~~  
28 ~~disability, as defined in subdivision (j) of Section 12926, veteran~~  
29 ~~status, as defined in Section 101(2) of Title 38 of the United States~~  
30 ~~Code, gender, gender identity, sexual orientation, and areas of legal~~  
31 ~~practice and employment.~~

32 (ii) The statewide summary of the recommendations of the  
33 designated agency of the State Bar by ethnicity, race, ~~physical~~  
34 ~~disability, as defined in subdivision (l) of Section 12926, mental~~  
35 ~~disability, as defined in subdivision (j) of Section 12926, veteran~~  
36 ~~status, as defined in Section 101(2) of Title 38 of the United States~~  
37 ~~Code, gender, gender identity, sexual orientation, and areas of~~  
38 ~~legal practice and employment.~~

39 (C) The Administrative Office of the Courts shall collect and  
40 release the demographic data provided by justices and judges

1 described in Article VI of the California Constitution relative to  
2 ethnicity, race, ~~physical disability, as defined in subdivision (l) of~~  
3 ~~Section 12926, mental disability, as defined in subdivision (j) of~~  
4 ~~Section 12926, veteran status, as defined in Section 101(2) of Title~~  
5 ~~38 of the United States Code, gender, gender identity, and sexual~~  
6 orientation by specific jurisdiction.

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

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

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

29 (6) For purposes of this subdivision, the collection of  
30 demographic data relative to ~~physical disability, mental disability,~~  
31 ~~disability~~ and veteran status shall be required only for judicial  
32 applicants, candidates, appointees, nominees, justices, and judges  
33 who apply, or are reviewed, appointed, nominated, or elected, on  
34 or after January 1, 2014. The release of this demographic data shall  
35 begin in 2015.

36 (7) *For purposes of this subdivision, the following terms have*  
37 *the following meanings:*

38 (i) *“Disability” includes mental disability and physical*  
39 *disability, as defined in subdivisions (j), (l), and (m) of Section*  
40 *12926.*

1 (ii) “Veteran status” has the same meaning as specified in  
2 Section 101(2) of Title 38 of the United States Code.

3 (o) ~~Members~~The Governor and members of judicial selection  
4 advisory committees are encouraged to ~~recommend~~ give particular  
5 consideration to candidates from diverse backgrounds and cultures  
6 reflecting the demographics of ~~California~~. California, including  
7 candidates with demographic characteristics underrepresented  
8 among existing judges and justices.

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