

AMENDED IN SENATE JUNE 21, 2007

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY MARCH 22, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 159

Introduced by Assembly Member Jones
(Principal coauthors: Assembly Members Benoit and Carter)
(Principal coauthor: Senator Cedillo)
(Coauthors: Assembly Members Garcia, Levine, and Lieber)

January 18, 2007

An act to amend Section 12011.5 of, and to add Sections 69614.2 and 69615 to, the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 159, as amended, Jones. Courts: judgeships.

(1) 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 a vacant judicial office for evaluation of their judicial qualifications. Existing law also requires the Governor, on or before March 1, 2007, and annually on or before each March 1 thereafter, to disclose aggregate statewide demographic data provided by all judicial applicants relative to ethnicity and gender.

This bill would require the Governor to collect and release, on an aggregate statewide basis, demographic data provided by all judicial applicants relative to ethnicity, race, and gender and demographic data relative to ethnicity, race, and gender of all judicial appointments or nominations as provided by the judicial appointee or nominee.

(2) Existing law specifies the number of judges for the superior court of each county and for each division of each district of the court of appeal.

This bill would authorize an unspecified number of additional judges, upon appropriation by the Legislature in the 2007–08 fiscal year, to be allocated to the various county superior courts, pursuant to uniform criteria approved by the Judicial Council.

This bill would provide that, upon subsequent authorization by the Legislature, 162 subordinate judicial officer positions in eligible superior courts, as determined by the Judicial Council, shall be converted to judgeships, according to specified criteria, except that no more than 16 positions may be converted to judgeships in any calendar year. The bill would define the term “subordinate judicial officer” for purposes of those provisions and would further declare the Legislature’s intent to restore an appropriate balance between subordinate judicial officers and judges in enacting those provisions.

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, ~~sexual~~ gender, and racial diversity of the population

1 of California and composed in accordance with Sections 11140
2 and 11141 of the Government Code. The further intent of this
3 subdivision is to establish a selection process for membership on
4 the designated agency of the State Bar responsible for evaluation
5 of judicial candidates under which no member of that agency shall
6 provide inappropriate, multiple representation for purposes of this
7 subdivision.

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

21 (d) In determining the qualifications of a candidate for judicial
22 office, the State Bar shall consider, among other appropriate
23 factors, his or her industry, judicial temperament, honesty,
24 objectivity, community respect, integrity, health, ability, and legal
25 experience.

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

1 communications from persons whose opinion has been sought on
2 the candidate's qualifications.

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

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

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

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

38 (j) At any time prior to the receipt of the report from the State
39 Bar specified in subdivision (c) the Governor may withdraw the

1 name of any person submitted to the State Bar for evaluation
2 pursuant to this section.

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

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

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

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

31 (n) (1) Notwithstanding any other provision of this section, on
32 or before March 1, 2007, and on or before March 1 of each year
33 thereafter, all of the following shall occur:

34 (A) The Governor shall collect and release, on an aggregate
35 statewide basis, both of the following:

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

38 (ii) Demographic data relative to ethnicity, race, and gender of
39 all judicial appointments or nominations as provided by the judicial
40 appointee or nominee.

1 (B) The designated agency of the State Bar responsible for
2 evaluation of judicial candidates shall collect and release both of
3 the following on-a *an* aggregate statewide basis:

4 (i) Statewide demographic data provided by judicial applicants
5 reviewed relative to ethnicity, race, and gender.

6 (ii) The statewide summary of the recommendations of the
7 designated agency of the State Bar by ethnicity, race, and gender.

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

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

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

25 SEC. 2. Section 69614.2 is added to the Government Code, to
26 read:

27 69614.2. Upon appropriation by the Legislature in the 2007–08
28 fiscal year, there shall be ____ additional judges allocated to the
29 various county superior courts, pursuant to the uniform criteria
30 described in subdivision (b) of Section 69614, as updated and
31 approved by the Judicial Council on February 23, 2007.

32 SEC. 3. Section 69615 is added to the Government Code, to
33 read:

34 69615. (a) It is the intent of the Legislature in enacting this
35 section to restore an appropriate balance between subordinate
36 judicial officers and judges in the trial courts by providing for the
37 conversion, as needed, of subordinate judicial officer positions to
38 judgeships in courts that assign subordinate judicial officers to act
39 as temporary judges. The Legislature finds that these positions
40 must be converted to judgeships in order to ensure that critical

1 case types, including family, probate, and juvenile law matters can
2 be heard by judges.

3 (b) (1) Upon subsequent authorization by the Legislature, 162
4 subordinate judicial officer positions in eligible superior courts,
5 as determined by the Judicial Council pursuant to uniform criteria
6 for determining the need for converting existing subordinate
7 judicial officer positions to superior court judgeships, shall be
8 converted to judgeships as set forth in paragraph (2), except that
9 no more than 16 subordinate judicial officer positions may be
10 converted in any calendar year.

11 (2) A subordinate judicial officer position shall be converted to
12 a judicial position when a vacancy occurs in any subordinate
13 judicial officer position in an eligible superior court and the Judicial
14 Council files notice of the vacancy with the Secretary of State.

15 (3) The provisions of Section 12011.5 of the Government Code
16 shall apply to any appointment to a superior court judgeship
17 converted from a subordinate judicial officer position.

18 (c) For purposes of this section, “subordinate judicial officer”
19 means an officer appointed under the authority of Section 22 of
20 Article VI of the California Constitution. This section shall not
21 apply to a subordinate judicial officer established by Section 4251
22 of the Family Code.

23 (d) It is the intent of the Legislature that no subordinate judicial
24 officer shall involuntarily lose his or her position solely due to
25 operation of this section. This section does not change the
26 employment relationship between subordinate judicial officers and
27 the trial courts established by law.

28 (e) This section does not limit the authority of the Governor to
29 appoint a person to fill a vacancy pursuant to subdivision (c) of
30 Section 16 of Article VI of the California Constitution.

31 (f) This section does not entitle a court to an increase in funding.

32 (g) The operation of this section shall neither increase nor
33 decrease the number of judicial and subordinate judicial officer
34 positions and court support positions for which a county is
35 responsible by law.