

AMENDED IN SENATE SEPTEMBER 7, 2007

AMENDED IN SENATE SEPTEMBER 5, 2007

AMENDED IN SENATE JULY 17, 2007

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. Upon receipt of those names, the State Bar is required to evaluate and determine the qualifications of each candidate for judicial office and to report in confidence to the Governor its recommendation whether the candidate is qualified, as specified.

This bill would require the State Bar to consider legal experience of candidates broadly.

(2) 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, ~~those judicial applicants who were not submitted to the State Bar for evaluation,~~ and judicial appointments or nominations, relative to ethnicity, race, and gender. ~~The bill also would require the Governor to collect and release the names of all persons who were provided judicial application materials or related documentation on one or more judicial applicants by the Governor or his or her representatives to assist in the decision whether to submit an applicant to the State Bar for evaluation, and to collect and release data regarding the areas of legal practice and employment of all judicial applicants, appointees, and nominees, as specified.~~

(3) Existing law requires the designated agency of the State Bar responsible for evaluation of judicial candidates to collect and release, on an aggregate statewide basis, both statewide demographic data provided by judicial applicants reviewed relative to ethnicity, race, and gender, and the statewide summary of the agency's recommendations by ethnicity, race, and gender.

This bill would require that agency of the State Bar to also collect and release statewide demographic data provided by all judicial applicants reviewed, and the statewide summary of the agency's recommendations, both relative to the general category of legal practice and employment.

(4) 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 50 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 16 subordinate judicial officer positions in eligible superior courts, as determined by the Judicial Council, shall be converted to judgeships. Beginning in the 2008–09 fiscal year, the bill would provide that, upon subsequent authorization by the

Legislature, 146 subordinate judicial officer positions in eligible superior courts, as determined by the Judicial Council, shall be converted to judgeships, upon the occurrence of specified conditions, except that no more than 16 positions may be converted to judgeships in any fiscal 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, gender, and racial diversity of the population of
20 California and composed in accordance with Sections 11140 and
21 11141 of the Government Code. The further intent of this
22 subdivision is to establish a selection process for membership on
23 the designated agency of the State Bar responsible for evaluation
24 of judicial candidates under which no member of that agency shall
25 provide inappropriate, multiple representation for purposes of this
26 subdivision.

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 that
22 disclosure shall not constitute a waiver of privilege or breach of
23 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) No candidate for judicial office may be appointed until the
39 State Bar has reported to the Governor pursuant to this section, or
40 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, on
27 or before March 1, 2007, and on or before March 1 of each year
28 thereafter, 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, and gender.

33 (ii) Demographic data relative to ethnicity, race, and gender as
34 provided by all judicial applicants, *both as to those judicial*
35 *applicants who have been and those who have not been submitted*
36 *to the State Bar for evaluation.*

37 ~~(iii) The names of all persons who have been provided judicial~~
38 ~~application materials or related documentation on one or more~~
39 ~~judicial applicants by the Governor or his or her representatives~~
40 ~~to assist in the decision whether to submit an applicant to the State~~

1 ~~Bar for evaluation, other than employees of the Governor,~~
2 ~~including, but not limited to, the Governor's Legal Affairs~~
3 ~~Secretary and Appointments Secretary.~~

4 ~~(iv)~~

5 ~~(iii) Demographic data relative to ethnicity, race, and gender of~~
6 ~~all judicial appointments or nominations as provided by the judicial~~
7 ~~appointee or nominee.~~

8 ~~(v) Data regarding the general category of legal practice and~~
9 ~~employment of all judicial applicants on or after the time they~~
10 ~~applied to become a judge.~~

11 ~~(vi) Data regarding the general category of legal practice and~~
12 ~~employment of all judicial appointees and nominees.~~

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

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

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

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

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

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

39 SEC. 2. Section 69614.2 is added to the Government Code, to
40 read:

1 69614.2. Upon appropriation by the Legislature in the 2007–08
2 fiscal year, there shall be 50 additional judges allocated to the
3 various county superior courts, pursuant to the uniform criteria
4 described in subdivision (b) of Section 69614, as updated and
5 approved by the Judicial Council on February 23, 2007.

6 SEC. 3. Section 69615 is added to the Government Code, to
7 read:

8 69615. (a) It is the intent of the Legislature in enacting this
9 section to restore an appropriate balance between subordinate
10 judicial officers and judges in the trial courts by providing for the
11 conversion, as needed, of subordinate judicial officer positions to
12 judgeships in courts that assign subordinate judicial officers to act
13 as temporary judges. The Legislature finds that these positions
14 must be converted to judgeships in order to ensure that critical
15 case types, including family, probate, and juvenile law matters can
16 be heard by judges.

17 (b) (1) (A) Sixteen subordinate judicial officer positions in
18 eligible superior courts, as determined by the Judicial Council
19 pursuant to uniform criteria for determining the need for converting
20 existing subordinate judicial officer positions to superior court
21 judgeships, shall be converted to judgeships as set forth in
22 paragraph (2).

23 (B) Upon subsequent authorization by the Legislature, 146
24 subordinate judicial officer positions in eligible superior courts,
25 as determined by the Judicial Council pursuant to uniform criteria
26 for determining the need for converting existing subordinate
27 judicial officer positions to superior court judgeships, shall be
28 converted to judgeships as set forth in paragraphs (2) and (3),
29 except that no more than 16 subordinate judicial officer positions
30 may be converted in any fiscal year.

31 (2) The positions for conversion shall be allocated each fiscal
32 year pursuant to uniform allocation standards to be developed by
33 the Judicial Council for factually determining the relative judicial
34 need for conversion of a subordinate judicial officer position that
35 becomes vacant to a superior court judgeship position.

36 (3) Beginning in the 2008–09 fiscal year, a subordinate judicial
37 officer position shall be converted to a judgeship when all of the
38 following conditions are met:

1 (A) A vacancy occurs in a subordinate judicial officer position
2 in an eligible superior court as determined by the uniform allocation
3 standards described in paragraph (2).

4 (B) The Judicial Council files notice of the vacancies and
5 allocations with the Chair of the Senate Committee on Rules, the
6 Speaker of the Assembly, and the respective chairs of the Senate
7 and Assembly Committees on Judiciary.

8 (C) The proposed action is ratified by the Legislature, either in
9 the annual Budget Act or other legislative measure.

10 (4) The provisions of Section 12011.5 of the Government Code
11 shall apply to any appointment to a superior court judgeship
12 converted from a subordinate judicial officer position.

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

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

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

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

27 (g) The operation of this section shall neither increase nor
28 decrease the number of judicial and subordinate judicial officer
29 positions and court support positions for which a county is
30 responsible by law.

O