

HOUSE BILL 142

By Lundberg

AN ACT to amend Tennessee Code Annotated, Title 2;  
Title 4; Title 6; Title 16; Title 17 and Title 38,  
Chapter 6, relative to judges.

WHEREAS, pursuant to language proposed to be added to Article VI, Section 3 of the Tennessee Constitution by Senate Joint Resolution 710 in 2012 and Senate Joint Resolution 2 in 2013, and which was ratified by the people at the November 4, 2014 general election, this act provides an orderly procedure for the appointment, confirmation, and retention of appellate court judges as required by Article VI, Section 3; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 2, Chapter 5, Part 1, is amended by adding the following new section:

2-5-107.

The provisions of this part shall not apply to a retention election in which an incumbent appellate judge seeks election to fill the office to which the incumbent judge was appointed and confirmed. The provisions of title 17, chapter 4, part 1 shall govern such elections.

SECTION 2. Tennessee Code Annotated, Section 16-3-101(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) Before appointment and confirmation from one (1) of the three (3) grand divisions, a judge must have been a resident of the grand division from which the judge is appointed for at least one (1) year.

SECTION 3. Tennessee Code Annotated, Section 16-3-101(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c) Each judge shall be at least thirty-five (35) years of age and shall, before appointment and confirmation, have been a resident of the state for at least five (5) years.

SECTION 4. Tennessee Code Annotated, Section 16-4-102, is amended by deleting the section in its entirety and by substituting instead the following:

16-4-102.

(a) The court of appeals shall be composed of twelve (12) judges, of whom no more than four (4) shall reside in the same grand division of the state. Each judge shall be at least thirty (30) years of age and shall have been a resident of the state for at least five (5) years, and a resident of the applicable grand division for at least one (1) year, prior to appointment and confirmation. Each judge shall be licensed to practice law in this state and maintain active status during the time the person is a judge in this state.

(b) The judges of the court of appeals shall be appointed and confirmed for a full term of eight (8) years. They shall face a retention election at the end of the full eight-year term at the regular judicial election held in this state for the judges of the other courts of record.

(c) Their oath of office shall be filed and entered on the minutes of the court in the particular grand division from which the judge has been appointed and confirmed or subsequently elected. The oath shall likewise be filed and entered on the records in the office of the secretary of state at Nashville.

SECTION 5. Tennessee Code Annotated, Section 16-5-102, is amended by deleting the second sentence and by substituting instead the following:

Each judge shall be at least thirty (30) years of age and shall have been a citizen and resident of the state for at least five (5) years, and a resident of the applicable grand division for at least one (1) year, prior to appointment and confirmation.

SECTION 6. Tennessee Code Annotated, Title 17, Chapter 1, Part 3, is amended by deleting the part in its entirety.

SECTION 7. Tennessee Code Annotated, Section 17-4-101, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-101.

(a) Judges of the supreme court, court of appeals, or court of criminal appeals shall be appointed for a full term, or to fill a vacancy, by and at the discretion of the governor as provided in § 17-4-102.

(b) No appointee to the supreme court, court of appeals, or court of criminal appeals shall take office until confirmed by vote of the general assembly or until confirmed by default as provided in § 17-4-105.

(c) An appellate judge appointed and confirmed for a full eight-year term shall not face a retention election as provided in § 17-4-106 until the end of the full eight-year term, and the retention election shall be for an additional, full eight-year term.

(d) An appellate judge appointed and confirmed to fill a vacancy more than thirty (30) days prior to the regular August election occurring two (2) years prior to the end of the eight-year term shall face a retention election as provided in § 17-4-106 at the next regular August election following confirmation, and the retention election shall be for the remainder of the eight-year term.

(e) All incumbent appellate judges who seek to remain in office beyond the expiration of the eight-year term shall face a retention election as provided in § 17-4-106 at the regular August election preceding the end of the eight-year term, and the retention election shall be for a full eight-year term.

SECTION 8. Tennessee Code Annotated, Section 17-4-102, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-102.

(a) When an incumbent appellate judge fails to file with the state election commission a written declaration of candidacy pursuant to § 17-4-106 or withdraws the declaration of candidacy within the deadline established by § 17-4-106, the governor is authorized to appoint an individual to fill the office for a full eight-year term.

(b) Except as provided in subsection (a), when a vacancy occurs in the office of an appellate judge by death, resignation or otherwise, the governor is authorized to appoint an individual to fill the vacancy.

(c) The governor shall appoint an individual to the office of appellate judge who is fully qualified under the constitution and statutes of this state to fill the office for which the individual is appointed.

(d) Immediately upon making an appointment pursuant to this part, the governor shall provide written notice of the appointment to the judicial confirmation committee established by § 17-4-103. The notice shall specify whether the appointment is for a full eight-year term or for the filling of a vacancy.

SECTION 9. Tennessee Code Annotated, Section 17-4-103, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-103.

(a) There is established a special, continuing committee of the general assembly, to be known as the judicial confirmation committee, to be composed of fourteen (14) members as follows:

(1) The chair of the judiciary committee of the senate and six (6) other members of the senate, to be appointed by the speaker of the senate; and

(2) The chair of the civil justice committee of the house of representatives, the chair of the criminal justice committee of the house of

representatives and five (5) other members of the house of representatives, to be appointed by the speaker of the house of representatives.

(b) The political composition of the judicial confirmation committee shall reflect as nearly as possible the same ratio of members from each of the two (2) major political parties as the parties are represented in the respective houses.

(c)

(1) The initial terms of office shall commence on the effective date of this act. Members shall serve until their successors are appointed; provided, that the members continue to serve as members of the house from which the members were appointed. Successors shall be appointed during the fifteen-day organizational session of each general assembly to serve for two-year terms, provided that members continue to serve as members of the house from which the members were appointed. Members shall be eligible for reappointment to the committee.

(2) A vacancy on the judicial confirmation committee shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

(d) The chair and vice chair of the judicial confirmation committee shall rotate between the chair of the senate judiciary committee and the house of representatives civil justice committee every two (2) years. The chair and vice chair of the judicial confirmation committee shall be determined as follows:

(1) For the initial term commencing on the effective date of this act, and the term commencing during the 2019 organizational session of the general assembly and for the term commencing every four (4) years thereafter, the chair of the senate judiciary committee shall serve as chair of the judicial confirmation

committee and the chair of the house of representatives civil justice committee shall serve as vice-chair of the judicial confirmation committee; and

(2) For the term commencing during the 2017 organizational session of the general assembly, and for the term commencing every four (4) years thereafter, the chair of the house of representatives civil justice committee shall serve as chair of the judicial confirmation committee and the chair of the senate judiciary committee shall serve as vice chair of the judicial confirmation committee.

(e) If the judicial confirmation committee determines that additional officers are necessary to fulfill the duties of the committee, then the judicial confirmation committee may elect such officers from among its members.

(f) The committee shall meet at the call of the chair and as required in § 17-4-104(b)(4).

(g) Four (4) committee members of the house of representatives and four (4) committee members of the senate shall constitute a quorum.

(h) If the judiciary committee of the senate or the civil justice committee or criminal justice committee of the house of representatives shall cease to exist, then the positions set forth in this section shall be filled, respectively, by the chair or chair and vice chair of the successor committee with the same or similar subject matter jurisdiction.

SECTION 10. Tennessee Code Annotated, Section 17-4-104, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-104.

(a)

(1) Upon receiving written notice from the governor pursuant to § 17-4-102, the chair of the judicial confirmation committee shall convene at least one (1) meeting of the judicial confirmation committee.

(2) Any citizen shall be entitled to attend the meeting and express in writing the citizen's approval of, or objections to, the governor's appointee.

(3) The governor's appointee shall appear and make a statement, oral or written, and shall answer questions from committee members.

(4)

(A) After one (1) public hearing, the judicial confirmation committee may hold such additional interviews with the appointee as it deems necessary. The judicial confirmation committee may make independent investigation and inquiry to determine the qualifications of the appointee for the judicial vacancy.

(B) The judicial confirmation committee may request the Tennessee bureau of investigation, as authorized by § 38-6-106(g), or other appropriate agencies to perform appropriate financial and criminal background investigations and inquiries of a prospective appointee in addition to the investigations conducted pursuant to this part.

(C) Background investigation information received by the judicial confirmation committee pursuant to this section shall be treated as confidential and shall be considered a confidential record and not open for public inspection pursuant to title 10, chapter 7.

(D) The judicial confirmation committee is authorized to issue subpoenas, including subpoenas duces tecum, and to enforce the attendance of witnesses and the production of records, documents,

papers or other items of evidence, in the manner set forth in title 3, chapter 3, part 1.

(b)

(1) The judicial confirmation committee shall vote with each house voting separately and shall determine by a majority vote of the committee members of that house present and voting whether that house recommends confirmation or rejection of the governor's appointee. If the vote by the committee members present and voting of one (1) house is a tie, the recommendation of that house shall be for rejection of the governor's appointee, and the joint resolution of that house shall so reflect.

(2) If the general assembly is in its annual legislative session when written notice of the appointment is provided pursuant to § 17-4-102, then the judicial confirmation committee shall make a determination as provided in subdivision (b)(1) within thirty (30) days of receiving the notice.

(3) If the general assembly is not in its annual legislative session when written notice of the appointment is provided pursuant to § 17-4-102, and if the judicial confirmation committee does not act prior to the date on which the general assembly convenes the next annual legislative session, then the judicial confirmation committee shall make a determination as provided in subdivision (b)(1) within thirty (30) days of such convening date.

(4) If the general assembly is not in annual legislative session when written notice of the appointment is provided pursuant to § 17-4-102, the committee shall meet at the call of the chair or upon petition of seven (7) members of the committee. Once the determination is made as provided in subdivision (b)(1), the chair shall take custody of the documents, records, and



other information pertaining to the committee's hearing and determination until the next annual session convenes.

(c)

(1) A member of the judicial confirmation committee of each house shall file a joint resolution reflecting the recommendation of the member's house. If the chair or the vice chair, or both, of the judicial confirmation committee votes with the prevailing side of the recommendation of the member's house in subsection (b), then the chair or vice chair shall be the member to file the joint resolution reflecting the recommendation.

(2) If the chair or vice chair, or both, of the judicial confirmation committee does not vote with the prevailing side of the recommendation of the member's house in subsection (b), then a member of that house with the most seniority who voted with the prevailing side shall file the joint resolution reflecting the recommendation.

(3) Neither the senate nor the house of representatives shall refer the resolution to any additional committee; and the joint resolution shall be timely voted on by each house as provided in § 17-4-105.

(d) If a joint resolution has not been voted on by a respective house pursuant to § 17-4-105, then:

(1) Upon petition by a majority of all the members to which the senate is entitled, the senate shall vote the following session day to confirm or reject the appointment; and

(2) Upon petition by a majority of all the members to which the house of representatives is entitled, the house of representatives shall vote the following session day to confirm or reject the appointment.

SECTION 11. Tennessee Code Annotated, Section 17-4-105, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-105.

(a)

(1) In order to confirm the governor's judicial appointee by vote, the general assembly must vote to confirm the appointee by a constitutional majority in both the senate and the house of representatives within sixty (60) calendar days of the date:

(A) Written notice of the appointment is provided pursuant to § 17-4-102, if the general assembly is in its annual legislative session when the notice is provided; or

(B) The next annual legislative session is convened, if the general assembly is not in its annual legislative session when written notice of the appointment is provided pursuant to § 17-4-102.

(2) If the general assembly is voting to confirm the governor's appointee, any vote by either the senate or the house of representatives in which the number of affirmative votes to confirm fails to constitute a constitutional majority of that house shall be considered a vote to reject the appointment.

(3) If the general assembly is voting to reject the governor's appointee, in addition to subdivision (a)(2), either the senate or the house of representatives must vote by a majority of those present and voting to reject the appointee within sixty (60) calendar days of the date:

(A) Written notice of the appointment is provided pursuant to § 17-4-102, if the general assembly is in its annual legislative session when the notice is provided; or

(B) The next annual legislative session is convened, if the general assembly is not in its annual legislative session when written notice of the appointment is provided pursuant to § 17-4-102.

(b) If either the senate or the house of representatives votes to reject the governor's judicial appointee within the sixty-day period during which the appointee must be confirmed or rejected, then the appointee is rejected by the general assembly regardless of whether the other body has voted on the question.

(c) If either the senate or house of representatives votes to reject the governor's judicial appointee within sixty (60) days as provided in subsections (a) or (b), then the governor shall appoint another individual as provided in this part. Any individual who has been rejected by vote of the senate or house of representatives is not eligible for reappointment to the same office until after one (1) regular August election has occurred subsequent to the rejection.

(d) If there is a failure to either confirm or reject the governor's judicial appointee by vote within sixty (60) days as provided in subsections (a) or (b), then the appointee shall be deemed to be confirmed by default as of the sixty-first day.

(e)

(1) A judge confirmed in accordance with this section shall commence service in the office of an appellate judge:

(A) Upon confirmation, if the judge is confirmed to fill a vacancy for an unexpired term;

(B) September 1, if the judge is confirmed to a full eight-year term prior to the September 1 on which the term begins; or

(C) Upon confirmation, if the judge is confirmed to a full eight-year term after the eight-year term has commenced on September 1. The

eight-year term of a judge confirmed after September 1 shall end on the same date as a judge confirmed on or prior to September 1.

(2) For purposes of subdivisions (1)(A) and (1)(C), a judge shall be considered confirmed on the date when both speakers have signed a joint resolution confirming the appointee that was adopted by a constitutional majority of each body or on the date which the judge was confirmed in accordance with subsection (e).

SECTION 12. Tennessee Code Annotated, Section 17-4-106, is amended by deleting the section in its entirety and by substituting instead the following:

17-4-106.

(a)

(1) An incumbent appellate judge who seeks election by retention election to the office to which the incumbent judge was appointed and confirmed must qualify by filing with the state election commission a written declaration of candidacy to fill the term or the unexpired term. The declaration must be filed not later than twelve o'clock (12:00) noon prevailing time on the first Thursday in January before the regular August election. A judge appointed and confirmed after the first Thursday in January must file the declaration not later than the first Thursday occurring at least one (1) full week after the judge's confirmation. After timely filing the declaration, any request by the candidate to withdraw must be filed with the state election commission not later than twelve o'clock (12:00) noon prevailing time on the seventh day after the deadline for filing the declaration of candidacy.

(2) Title 2, chapter 5, part 1, does not apply to a retention election in which an incumbent appellate judge seeks election to fill the office to which the incumbent judge was appointed and confirmed.

(b)

(1) If the declaration of candidacy is timely filed, only the name of the candidate, without party designation, shall be submitted to the electorate in this state in the regular August election. Each county election commission of the state shall cause the following to be placed on the ballot:

Shall (Name of Candidate) be retained or replaced in office as a Judge of the (Name of the Court) ?

\_\_\_\_\_ Retain

OR

\_\_\_\_\_ Replace.

(2) If the declaration of candidacy is not timely filed, then:

(A) The judge's name shall not be submitted to the electorate;

and

(B) The governor shall fill the office subject to confirmation by the general assembly in accordance with this part.

(c)

(1) If a majority of those voting on the question vote to retain the candidate, then the candidate is duly elected to the office and shall be given a certificate of election.

(2) If a majority or one-half ( $\frac{1}{2}$ ) of those voting on the question vote to replace the candidate, then a vacancy exists in the office as of September 1 following the regular August election. The governor shall fill the office subject to confirmation by the general assembly in accordance with this part.

(3) A candidate who has been defeated in any retention election held under this chapter is not eligible for reappointment to the office for which the candidate was defeated until after one (1) regular August election has occurred subsequent to the defeat.

(d) If an incumbent appellate court judge fails to file a declaration of candidacy for election within the prescribed time or withdraws as a candidate for election, then the incumbent shall cease to serve in the office effective September 1 of that year. The governor shall fill the office subject to confirmation by the general assembly in accordance with this part.

SECTION 13. Tennessee Code Annotated, Section 17-4-107, is amended by deleting the section in its entirety and by substituting instead the following language:

17-4-107.

(a) After the effective date of this act, when a vacancy occurs in the office of a state trial court judge by death, resignation or otherwise, the governor shall fill the vacancy by appointing an individual who is fully qualified under the constitution and statutes of this state to fill the office for which the individual is appointed.

(b) The term of a judge appointed under this section shall expire on August 31 after the next regular August election occurring more than thirty (30) days after the vacancy occurs.

(c) At the next regular August election occurring more than thirty (30) days after the vacancy occurs, the qualified voters of the district shall elect a candidate to fill the

remainder of the unexpired term or a complete term, as provided in the general election law in title 2.

SECTION 14. Tennessee Code Annotated, Title 17, Chapter 4, Part 1, is amended by deleting Sections 17-4-108 through 17-4-120 in their entirety.

SECTION 15. Tennessee Code Annotated, Section 17-4-201, is amended by deleting the section in its entirety.

SECTION 16. Tennessee Code Annotated, Section 38-6-106, is amended by adding the following new subsection (g):

(g) In addition to the list of officials in subsection (b) who are authorized to request the director of the Tennessee bureau of investigation to conduct a background investigation concerning persons under consideration for appointment to a position of trust and responsibility, the chair of the judicial confirmation committee may request an investigation of any gubernatorial appointee to the position of justice of the supreme court or judge of the court of appeals or court of criminal appeals who is scheduled to appear before the committee for confirmation pursuant to § 17-4-104.

SECTION 17. This act shall take effect upon becoming a law, the public welfare requiring it.