

6080

2009-2010 Regular Sessions

I N S E N A T E

July 6, 2009

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the judiciary law, in relation to modernizing the commission on judicial nomination, and to repeal certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative declaration. The legislature finds that the
2 commission on judicial nomination serves the vital purpose of soliciting
3 and nominating excellent candidates for the court of appeals who by
4 their temperament and experience are well qualified to hold high judi-
5 cial office. The legislature reaffirms its commitment to this goal and
6 the process of merit selection for the court of appeals that is the
7 commission's constitutional purpose. The legislature also recognizes,
8 however, that the commission and its operations have not been reviewed
9 meaningfully and comprehensively since the commission first was estab-
10 lished in 1978. While more than three decades of experience demonstrate
11 that the commission has recommended outstanding candidates for the court
12 of appeals, the statutory predicate for the commission is outdated and
13 does not fully reflect national best practices for transparency and
14 accountability. Neither does the selection process, based on current
15 law, encourage a large, broad and diverse cross-section of qualified
16 lawyers and judges to apply for consideration by the commission, instead
17 yielding a candidate pool typically too small to assure the public that
18 the process is as inclusive as reasonably practicable and that such
19 process selects for the very best jurists to serve in this state's high-
20 est judicial offices. The legislature therefore declares its intent to
21 modernize the commission on judicial nomination and ensure that the
22 overall selection process solicits, recruits and appropriately considers
23 a broad cross-section of excellent jurists for high judicial service,

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 compatibly with both principles of merit selection and the public trust
2 that the constitution vests in the commission.

3 S 2. Subdivision 2 of section 61 of the judiciary law, as added by
4 chapter 156 of the laws of 1978, is amended to read as follows:

5 2. "Candidate" means a person who is constitutionally eligible to hold
6 the office of chief judge or associate judge of the court of appeals and
7 (a) who has requested the commission to consider his OR HER qualifica-
8 tions to hold such office; or (b) who has been recommended for consider-
9 ation by the commission by another person, including a community or
10 professional organization, IN ACCORDANCE WITH THIS ARTICLE; or (c) who
11 has agreed to be considered by the commission at the commission's
12 request.

13 S 3. Subdivisions 2, 3, 4 and 6 of section 62 of the judiciary law, as
14 added by chapter 156 of the laws of 1978, are amended to read as
15 follows:

16 2. [The members first appointed by the governor shall have respective-
17 ly one, two, three and four-year terms as he shall designate. The
18 members first appointed by the chief judge of the court of appeals shall
19 have respectively one, two, three and four-year terms as he shall desig-
20 nate. The member first appointed by the temporary president of the
21 senate shall have a one-year term. The member first appointed by the
22 minority leader of the senate shall have a two-year term. The member
23 first appointed by the speaker of the assembly shall have a four-year
24 term. The member first appointed by the minority leader of the assembly
25 shall have a three-year term. Each subsequent] EACH appointment shall be
26 for a term of four years; PROVIDED THAT NO COMMISSIONER SHALL SERVE FOR
27 LONGER THAN TWO FULL TERMS AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH,
28 EXCLUDING THE UNEXPIRED PORTION OF ANY TERM TO WHICH SUCH COMMISSIONER
29 INITIALLY SHALL HAVE BEEN APPOINTED PURSUANT TO SUBDIVISION THREE OF
30 THIS SECTION. TO THE EXTENT PRACTICABLE, EACH OFFICER MAKING AN APPOINT-
31 MENT TO THE COMMISSION PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL
32 MAKE SUCH APPOINTMENT IN A MANNER THAT REFLECTS THE RACIAL, GENDER,
33 ETHNIC, GEOGRAPHIC AND EXPERIENTIAL DIVERSITY OF THE STATE.

34 3. A vacancy shall be deemed to occur immediately upon the EARLIER
35 HAPPENING OF THE EXPIRATION OF TERM PURSUANT TO THIS SECTION OR THE
36 appointment or election of any member to an office that would disqualify
37 him OR HER for appointment to, or membership on, the commission. A
38 vacancy [occurring] OCCURRING for any reason other than by expiration of
39 term shall be filled by the appointing officer for the remainder of the
40 unexpired term. NOT LATER THAN THIRTY DAYS BEFORE THE EXPIRATION OF A
41 TERM HEREUNDER, AND IMMEDIATELY UPON THE HAPPENING OF A VACANCY BY
42 REASON OTHER THAN AN EXPIRATION OF TERM, THE COMMISSION SHALL SO INFORM
43 THE APPOINTING OFFICER REQUIRED BY SUBDIVISION ONE OF THIS SECTION TO
44 APPOINT A COMMISSIONER BY REASON OF SUCH VACANCY OR EXPIRATION OF TERM.

45 4. The members shall designate one of their number to serve as [chair-
46 man] CHAIRPERSON for a period of two years or until his term of office
47 expires, whichever period is shorter.

48 6. Ten members of the commission shall constitute a quorum; PROVIDED,
49 HOWEVER, THAT IN THE EVENT OF ONE OR MORE VACANCIES IN THE COMMISSION,
50 THE NUMBER OF MEMBERS REQUIRED TO CONSTITUTE A QUORUM SHALL BE REDUCED
51 BY THE NUMBER OF VACANCIES NOT GREATER THAN TWO.

52 S 4. Subdivisions 1, 2 and 3 of section 63 of the judiciary law, as
53 amended by chapter 35 of the laws of 1983, are amended to read as
54 follows:

55 1. The commission shall consider and evaluate the qualifications of
56 candidates for appointment to the offices of chief judge and associate

1 judge of the court of appeals and, as a vacancy occurs in any such
2 office, shall recommend to the governor persons who by their character,
3 temperament, professional aptitude and experience are well qualified to
4 hold such judicial office. IN SELECTING AMONG SUCH WELL QUALIFIED
5 PERSONS, TO THE EXTENT PRACTICABLE CONSISTENT WITH SUBDIVISION C OF
6 SECTION TWO OF ARTICLE SIX OF THE CONSTITUTION, THE COMMISSION MAY
7 CONSIDER APPROPRIATE INSTITUTIONAL FACTORS OF RACIAL, GENDER, ETHNIC,
8 GEOGRAPHIC, EXPERIENTIAL AND OTHER DIVERSITY BEARING ON THE CHARACTER,
9 TEMPERAMENT, APTITUDE AND EXPERIENCE OF SUCH CANDIDATES, INCLUDING EXPE-
10 RIENCE IN LITIGATION AND ADJUDICATION IN AND AMONG THE VARIOUS TRIBUNALS
11 OF THIS STATE.

12 2. (a) In recognition of the unique responsibilities of the chief
13 judge of the court of appeals for policies of judicial administration,
14 for a vacancy in the office of chief judge the commission shall recom-
15 mend to the governor [seven] NINE persons; PROVIDED THAT BY VOTE IN
16 ACCORDANCE WITH SUBDIVISION FOUR OF SECTION SIXTY-FIVE-A OF THIS ARTI-
17 CLE, THE COMMISSION MAY RECOMMEND TO THE GOVERNOR SEVEN PERSONS.

18 (b) For a vacancy in the office of associate judge, the commission
19 shall recommend to the governor at least [three] FIVE persons and not
20 more than [seven] NINE persons; PROVIDED THAT BY VOTE IN ACCORDANCE WITH
21 SUBDIVISION FOUR OF SECTION SIXTY-FIVE-A OF THIS ARTICLE, THE COMMISSION
22 MAY RECOMMEND TO THE GOVERNOR BETWEEN THREE AND SEVEN PERSONS. Should
23 more than one vacancy exist at the same time in the office of associate
24 judge, the number of persons recommended by the commission to the gover-
25 nor shall be at least [three] FIVE (OR THREE BY VOTE IN ACCORDANCE WITH
26 SUBDIVISION FOUR OF SECTION SIXTY-FIVE-A OF THIS ARTICLE) plus one addi-
27 tional person for each vacancy in such office, and not more than [seven]
28 NINE (OR SEVEN BY VOTE IN ACCORDANCE WITH SUBDIVISION FOUR OF SECTION
29 SIXTY-FIVE-A OF THIS ARTICLE) plus one additional person for each vacan-
30 cy in such office.

31 (c) Should vacancies exist in the offices of chief judge and associate
32 judge at the same time, the commission shall recommend for the office of
33 associate judge the number of persons as provided in paragraph (b) of
34 this subdivision, provided, however, that in addition thereto the
35 commission may also recommend for associate judge any of the persons who
36 have been recommended to the governor for the office of chief judge.

37 3. A recommendation to the governor shall require the concurrence of
38 eight members of the commission, EXCEPT AS OTHERWISE PROVIDED IN SUBDI-
39 VISION SIX OF SECTION SIXTY-FIVE-A OF THIS ARTICLE. The recommendations
40 to the governor shall be transmitted to the governor in a single written
41 report which shall be released to the public by the commission at the
42 time it is submitted to the governor. The report shall be in writing,
43 signed only by the [chairman] CHAIRPERSON, and shall include the commis-
44 sion's findings relating to the character, temperament, professional
45 aptitude, experience, qualifications and fitness for office of each
46 candidate who is recommended to the governor, INCLUDING A SUMMARY OF
47 MAJOR LEGAL MATTERS IN WHICH EACH CANDIDATE PARTICIPATED FAIRLY REPRE-
48 SENTATIVE OF THE EXPERIENCE OF SUCH CANDIDATE, AND SUCH ADDITIONAL
49 DETAILS AS NECESSARY TO GIVE TO THE GOVERNOR AND THE PUBLIC FULL DISCLO-
50 SURE OF THE EXPERIENCE AND RELATIVE STRENGTHS OF EACH CANDIDATE. THE
51 COMMISSION SHALL CAUSE TO BE PLACED PROMINENTLY ON ITS PUBLIC WEBSITE A
52 COPY OF SUCH REPORT, INCLUDING ALL SUPPORTING MATERIALS, ON THE DAY THAT
53 THE COMMISSION TRANSMITS THE SAME TO THE GOVERNOR.

54 S 5. Subdivision 7 of section 64 of the judiciary law is renumbered
55 subdivision 8 and a new subdivision 7 is added to read as follows:

1 7. ESTABLISH AND CONTINUOUSLY MAINTAIN A PUBLIC WEBSITE THAT
2 DISCLOSES: (A) THE NAME, BIOGRAPHY, TERM AND APPOINTING AUTHORITY OF
3 EACH COMMISSIONER; (B) INFORMATION ABOUT THE COURT OF APPEALS AND THE
4 SELECTION PROCESS; (C) INSTRUCTIONS TO THE PUBLIC AND ORGANIZATIONS TO
5 PROPOSE PURSUANT TO SECTION SIXTY-NINE OF THIS ARTICLE PROSPECTIVE
6 CANDIDATES FOR CONSIDERATION BY THE COMMISSION; (D) INSTRUCTIONS TO THE
7 PUBLIC AND ORGANIZATIONS TO COMMENT TO THE GOVERNOR PURSUANT TO SECTION
8 SIXTY-NINE OF THIS ARTICLE ON PERSONS RECOMMENDED BY THE COMMISSION; (E)
9 VACANCY NOTICES FOR THE COURT OF APPEALS PURSUANT TO SUBDIVISION ONE OF
10 SECTION SIXTY-EIGHT OF THIS ARTICLE; (F) SAMPLE COPIES OF THE CANDIDATE
11 QUESTIONNAIRE AND FINANCIAL DISCLOSURE FORM; (G) CONSTITUTIONAL AND
12 STATUTORY AUTHORITIES GOVERNING THE COMMISSION, INCLUDING A COPY OF THIS
13 ARTICLE; (H) THE RULES OF THE COMMISSION; (I) INSTRUCTIONS TO THE PUBLIC
14 TO REPORT ALLEGED VIOLATIONS OF THE CONFIDENTIALITY REQUIREMENTS OF
15 SECTION SIXTY-SEVEN OF THIS ARTICLE; (J) UPON THE RECOMMENDATION OF
16 CANDIDATES TO THE GOVERNOR, THE MATERIALS REQUIRED TO BE DISCLOSED TO
17 THE PUBLIC PURSUANT TO SUBDIVISION THREE OF SECTION SIXTY-THREE OF THIS
18 ARTICLE; AND (J) SUCH FURTHER MATERIALS AS THE GOVERNOR, CHIEF JUDGE OR
19 COMMISSION MAY DIRECT TO PROMOTE PUBLIC UNDERSTANDING OF AND PARTIC-
20 IPATION IN THE NOMINATION PROCESS CONSISTENT WITH THIS ARTICLE. IN
21 FURTHERANCE OF THE RESPONSIBILITIES OF THIS SUBDIVISION, THE OFFICE OF
22 COURT ADMINISTRATION SHALL, ON REQUEST OF THE COMMISSION, ASSIST THE
23 COMMISSION TO ESTABLISH AND MAINTAIN SUCH WEBSITE IN A COMPREHENSIBLE
24 AND ACCESSIBLE FORMAT.

25 S 6. Subdivision 4 of section 65 of the judiciary law is REPEALED.

26 S 7. The judiciary law is amended by adding a new section 65-a to read
27 as follows:

28 S 65-A. COMMISSION SELECTION PROCESS; BALLOTS. 1. THE COMMISSION
29 SHALL DETERMINE WHICH PROSPECTIVE CANDIDATES TO INTERVIEW, HOW MANY
30 CANDIDATES TO RECOMMEND TO THE GOVERNOR, WHICH PROSPECTIVE CANDIDATES
31 SHALL REACH THE COMMISSION BALLOT, HOW TO CONDUCT ROUNDS OF VOTING AND
32 WHICH CANDIDATES TO RECOMMEND TO THE GOVERNOR, ALL IN ACCORDANCE WITH
33 THIS SECTION.

34 2. THE COMMISSION SHALL INTERVIEW EVERY PROSPECTIVE CANDIDATE WHO
35 AFTER REVIEW OF THEIR CREDENTIALS PURSUANT TO THIS ARTICLE SHALL OBTAIN
36 AN INITIAL VOTE OF SUPPORT OF AT LEAST FOUR COMMISSIONERS.

37 3. AFTER COMPLETION OF ALL INTERVIEWS PURSUANT TO SUBDIVISION TWO OF
38 THIS SECTION, THE COMMISSION SHALL DISCUSS THE QUALIFICATIONS OF EACH
39 INTERVIEWEE. THE COMMISSION SHALL DESIGNATE AS CANDIDATES ELIGIBLE FOR
40 RECOMMENDATION TO THE GOVERNOR ALL INTERVIEWEES WHO THEREAFTER SHALL
41 OBTAIN A VOTE OF SUPPORT OF AT LEAST FOUR COMMISSIONERS.

42 4. BEFORE VOTING PURSUANT TO SUBDIVISION FIVE OF THIS SECTION, THE
43 COMMISSION MAY BY VOTE OF SEVEN COMMISSIONERS REDUCE THE NUMBER OF
44 CANDIDATES THE COMMISSION SHALL RECOMMEND TO THE GOVERNOR FOR CHIEF
45 JUDGE TO SEVEN PERSONS, AND FOR ASSOCIATE JUDGE TO THE RANGE BETWEEN
46 THREE AND SEVEN PERSONS.

47 5. (A) AFTER THE COMPLETION OF DISCUSSIONS PURSUANT TO SUBDIVISION
48 THREE OF THIS SECTION, EACH COMMISSIONER SHALL RECEIVE A BALLOT FOR THE
49 FIRST ROUND OF VOTING THAT LISTS EACH CANDIDATE IN ALPHABETICAL ORDER.
50 FOR CHIEF JUDGE, EACH COMMISSIONER SHALL VOTE FOR NINE CANDIDATES OR
51 SUCH LESSER NUMBER OF CANDIDATES AS THE COMMISSION PREVIOUSLY MAY HAVE
52 DETERMINED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION. FOR ASSOCIATE
53 JUDGE, EACH COMMISSIONER SHALL VOTE FOR NO LESS THAN FIVE AND NO MORE
54 THAN NINE CANDIDATES, OR SUCH LESSER NUMBER OF CANDIDATES AS THE COMMISS-
55 SION SHALL HAVE DETERMINED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

(B) EVERY CANDIDATE WHO SHALL RECEIVE EIGHT OR MORE VOTES IN ANY ROUND OF VOTING SHALL BE DEEMED SELECTED FOR RECOMMENDATION TO THE GOVERNOR, EXCEPT THAT IF A GREATER NUMBER OF CANDIDATES THAT REMAIN TO BE SELECTED SHALL RECEIVE EIGHT OR MORE VOTES IN SUCH ROUND OF VOTING, THEN THE VOTE IN SUCH ROUND SHALL BE NULLIFIED, ALL CANDIDATES NOT RECEIVING AT LEAST EIGHT VOTES IN SUCH ROUND OF VOTING SHALL BE EXCLUDED, NEW BALLOTS LISTING EACH REMAINING CANDIDATE IN ALPHABETICAL ORDER SHALL BE DISTRIBUTED AND SUCH ROUND OF VOTING SHALL BE REPEATED.

(C) (I) IN ANY ROUND OF VOTING AFTER THE FIRST, FOR CHIEF JUDGE, EACH COMMISSIONER SHALL VOTE FOR A NUMBER OF CANDIDATES EQUAL TO THE NUMBER OF VOTES REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION TO BE CAST FOR CHIEF JUDGE IN THE FIRST ROUND OF VOTING LESS THE NUMBER OF CANDIDATES ALREADY SELECTED, AND FOR ASSOCIATE JUDGE EACH COMMISSIONER SHALL VOTE FOR A NUMBER OF CANDIDATES WITHIN THE RANGE OF THE NUMBER OF VOTES REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION TO BE CAST FOR ASSOCIATE JUDGE IN THE FIRST ROUND OF VOTING LESS THE NUMBER OF CANDIDATES ALREADY SELECTED.

(II) IF IN ANY ROUND OF VOTING NO CANDIDATE SHALL RECEIVE EIGHT OR MORE VOTES, THEN THE VOTES IN SUCH ROUND SHALL BE TABULATED, THE CANDIDATE RECEIVING THE FEWEST NUMBER OF VOTES SHALL BE EXCLUDED, THE VOTE IN SUCH ROUND SHALL BE NULLIFIED, NEW BALLOTS LISTING EACH REMAINING CANDIDATE IN ALPHABETICAL ORDER SHALL BE DISTRIBUTED AND SUCH ROUND OF VOTING SHALL BE REPEATED IN THE MANNER SPECIFIED BY THIS PARAGRAPH; PROVIDED THAT IN THE EVENT OF A TIE BETWEEN TWO OR MORE CANDIDATES RECEIVING THE FEWEST NUMBER OF VOTES, THE COMMISSION SHALL BY VOTE OF SEVEN COMMISSIONERS EXCLUDE ONE SUCH CANDIDATE.

(III) IF AFTER ANY ROUND OF VOTING THE TOTAL NUMBER OF CANDIDATES SELECTED FOR RECOMMENDATION TO THE GOVERNOR SHALL BE LESS THAN THE MINIMUM NUMBER TO BE SELECTED, THEN THE COMMISSION SHALL BEGIN A NEW ROUND OF VOTING IN WHICH EACH COMMISSIONER SHALL RECEIVE A BALLOT LISTING IN ALPHABETICAL ORDER EACH REMAINING CANDIDATE NOT YET SELECTED OR EXCLUDED, AND THE VOTE IN SUCH NEW ROUND OF VOTING SHALL PROCEED IN THE MANNER SPECIFIED BY THIS PARAGRAPH.

(D) PRIOR TO EACH ROUND OF VOTING, THE COMMISSION MAY DISCUSS THE REMAINING CANDIDATES. AFTER EACH ROUND OF VOTING, THE VOTES SHALL BE TABULATED AND THE RESULTS ANNOUNCED TO THE COMMISSION BUT THE SECRECY OF EACH COMMISSIONER'S VOTES SHALL BE PRESERVED.

(E) THE COMMISSION SHALL CONDUCT SUCCESSIVE ROUNDS OF VOTING PURSUANT TO THIS SUBDIVISION UNTIL THE COMMISSION SHALL SELECT A NUMBER OF CANDIDATES AUTHORIZED TO BE RECOMMENDED TO THE GOVERNOR.

6. IF THERE BE ONE OR MORE VACANCIES IN THE COMMISSION, THEN THE NUMBER OF VOTES REQUIRED IN ANY VOTE PURSUANT TO THIS SECTION SHALL BE REDUCED BY THE NUMBER OF SUCH VACANCIES NOT GREATER THAN TWO.

7. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE COMMISSION MAY BY RULE PROVIDE THAT IF THERE ARE MORE THAN TWENTY CANDIDATES ON THE BALLOT FOR THE FIRST ROUND OF VOTING, ANY CANDIDATE RECEIVING TWO OR FEWER VOTES IN ANY ROUND OF VOTING SHALL BE EXCLUDED.

S 8. Subdivisions 1, 2 and 3 of section 68 of the judiciary law, subdivisions 1 and 3 as added by chapter 156 of the laws of 1978, paragraphs (a), (b) and (c) of subdivision 1 as amended by chapter 853 of the laws of 1984 and subdivision 2 as amended by chapter 35 of the laws of 1983, are amended to read as follows:

1. Whenever a vacancy will occur in the office of chief judge or associate judge of the court of appeals by expiration of term:

(a) on December thirty-first in a year fixed by the constitution for the election of the governor, the clerk of the court of appeals shall

1 notify the commission of the anticipated vacancy no later than [May
2 first] APRIL TENTH. The commission shall make its recommendations to
3 the governor-elect[,] on [December first] NOVEMBER TENTH. The governor
4 shall make his OR HER appointment from among those persons recommended
5 [to him] by the commission no sooner than January first nor later than
6 January fifteenth thereafter; or

7 (b) [on December thirty-first in a year fixed by the constitution for
8 the election of members of the senate but not the governor, the clerk of
9 the court of appeals shall notify the commission of the anticipated
10 vacancy no later than May first. The commission shall make its recommen-
11 dations to the governor on December first. The governor shall make his
12 appointment from among those persons recommended to him by the commis-
13 sion no sooner than January first nor later than January fifteenth ther-
14 eafter; or

15 (c)] on December thirty-first in any other year, the clerk of the
16 court of appeals shall notify the commission of the anticipated vacancy
17 no later than May first. The commission shall make its recommendations
18 to the governor no later than [October fifteenth] NOVEMBER TENTH. The
19 governor shall make his OR HER appointment from among those persons
20 recommended [to him] by the commission no sooner than [November
21 fifteenth] JANUARY FIRST nor later than [December first] JANUARY
22 FIFTEENTH thereafter; or

23 [(d)] (C) on any other date, the clerk of the court of appeals shall
24 notify the commission of the anticipated vacancy no later than [eight]
25 NINE months prior to the date such vacancy will occur. The commission
26 shall make its recommendations to the governor no later than [sixty]
27 NINETY days prior to the date of such vacancy. The governor shall make
28 his OR HER appointment from among those persons recommended [to him] by
29 the commission no sooner than [fifteen] FORTY-FIVE nor more than [thir-
30 ty] SIXTY days after receipt of the commission's recommendations.

31 2. Whenever a vacancy occurs other than by expiration of term, the
32 clerk of the court of appeals shall immediately notify the commission of
33 such vacancy. The commission shall make its recommendations to the
34 governor no later than one hundred twenty days after receipt of such
35 notice. The governor shall make his OR HER appointment from among those
36 persons recommended [to him] by the commission no sooner than [fifteen
37 days nor later] FORTY-FIVE NOR MORE than [thirty] SIXTY days after
38 receipt of the commission's recommendations.

39 3. Whenever a vacancy occurs and the senate is not in session to give
40 its advice and consent to an appointment to fill such vacancy, the
41 governor shall make an interim appointment from among those persons
42 recommended [to him] by the commission. An interim appointment shall
43 continue until the senate shall pass upon the governor's selection. If
44 the senate confirms an appointment, the judge shall serve a term as
45 provided in subdivision a of section two of article six of the constitu-
46 tion, commencing from the date of [his] THE interim appointment. If the
47 senate rejects an appointment, a vacancy in the office shall occur sixty
48 days after such rejection. If an interim appointment to the court of
49 appeals be made from among the justices of the supreme court or the
50 appellate divisions thereof, that appointment shall not affect the
51 justice's existing office, nor create a vacancy in the supreme court, or
52 the appellate division thereof, unless such appointment is confirmed by
53 the senate and the appointee shall assume such office. If an interim
54 appointment of chief judge of the court of appeals be made from among
55 the associate judges, an interim appointment of associate judge shall be
56 made in like manner; in such case, the appointment as chief judge shall

1 not affect the existing office of associate judge, unless such appoint-
2 ment as chief judge is confirmed by the senate and the appointee shall
3 assume such office.

4 S 9. The judiciary law is amended by adding a new section 69 to read
5 as follows:

6 S 69. PUBLIC PARTICIPATION. FOR THE PURPOSE OF PROMOTING RECRUITMENT
7 OF POTENTIALLY QUALIFIED CANDIDATES FOR CONSIDERATION BY THE COMMISSION
8 AND ENCOURAGING PUBLIC COMMENT ON CANDIDATES RECOMMENDED BY THE COMMIS-
9 SION TO THE GOVERNOR:

10 1. NOT LATER THAN FIVE DAYS AFTER THE CLERK OF THE COURT OF APPEALS
11 SHALL INFORM THE COMMISSION OF A VACANCY OR EXPECTED VACANCY IN THE
12 OFFICE OF CHIEF JUDGE OR ASSOCIATE JUDGE OF THE COURT OF APPEALS PURSU-
13 ANT TO SUBDIVISION ONE OR TWO OF SECTION SIXTY-EIGHT OF THIS ARTICLE,
14 THE COMMISSION SHALL CAUSE TO BE TRANSMITTED A VACANCY NOTICE TO EVERY
15 BAR ASSOCIATION IN THIS STATE, INCLUDING BUT NOT LIMITED TO THE NEW YORK
16 STATE BAR ASSOCIATION, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW
17 YORK AND EVERY BAR ASSOCIATION FOR ONE OR MORE COUNTIES OR CITIES, AND
18 EACH OTHER CIVIC, COMMUNITY OR PROFESSIONAL ORGANIZATION OF THIS STATE,
19 THAT SHALL REGISTER A POSTAL MAIL OR ELECTRONIC MAIL ADDRESS WITH THE
20 COMMISSION TO RECEIVE SUCH NOTICES, SUCH TRANSMITTAL TO BE SENT TO THE
21 POSTAL AND/OR ELECTRONIC MAIL ADDRESS DESIGNATED BY EACH SUCH ASSOCI-
22 ATION OR ORGANIZATION. THE COMMISSION DILIGENTLY SHALL SOLICIT SUCH
23 REGISTRATIONS AND MAINTAIN AN ACCURATE DATABASE THEREOF FOR THE PURPOSE
24 OF MAXIMIZING TIMELY NOTIFICATION AND EFFECTIVE PUBLIC PARTICIPATION
25 HEREUNDER. ALONG WITH THE VACANCY NOTICE, THE COMMISSION SHALL TRANSMIT
26 TO EACH SUCH ASSOCIATION OR ORGANIZATION INSTRUCTIONS IN PLAIN LANGUAGE
27 FOR HOW TO PROPOSE TO THE COMMISSION ELIGIBLE PROSPECTIVE CANDIDATES
28 WHOM SUCH ASSOCIATION OR ORGANIZATION DEEMS WELL QUALIFIED FOR CHIEF
29 JUDGE OR ASSOCIATE JUDGE OF THE COURT OF APPEALS, AS THE CASE MAY BE,
30 AND TO COMMENT ON CANDIDATES FOR SUCH OFFICE RECOMMENDED BY THE COMMIS-
31 SION TO THE GOVERNOR, INCLUDING THE DEADLINES THEREFOR, CONSISTENT WITH
32 THIS SECTION. SUCH VACANCY NOTICE AND INSTRUCTIONS SHALL BE PROMINENTLY
33 PLACED ON THE PUBLIC WEBSITE OF THE COMMISSION CONTEMPORANEOUSLY WITH
34 THE TRANSMITTAL THEREOF PURSUANT TO THIS SUBDIVISION.

35 2. IN ACCORDANCE WITH SUBDIVISION THREE OF THIS SECTION, THE COMMIS-
36 SION SHALL ENACT AND PERIODICALLY MAY AMEND BY RULE:

37 (A) A PROCESS BY WHICH A BAR ASSOCIATION OR OTHER CIVIC, COMMUNITY OR
38 PROFESSIONAL ORGANIZATION MAY PROPOSE TO THE COMMISSION, IN THE NAME OF
39 SUCH ASSOCIATION OR ORGANIZATION, ONE OR MORE ELIGIBLE PROSPECTIVE
40 CANDIDATES TO FILL A VACANCY OR EXPECTED VACANCY IN THE COURT OF
41 APPEALS, SUCH PROPOSAL TO BE TRANSMITTED TO THE COMMISSION NOT LATER
42 THAN SIXTY DAYS AFTER THE COMMISSION MUST NOTIFY SUCH ASSOCIATION OR
43 ORGANIZATION OF SUCH VACANCY; AND

44 (B) A PROCESS BY WHICH A BAR ASSOCIATION OR OTHER COMMUNITY OR PROFES-
45 SIONAL ORGANIZATION MAY ISSUE TO THE GOVERNOR, IN THE NAME OF SUCH ASSO-
46 CIATION OR ORGANIZATION, FORMAL COMMENT ON THE QUALIFICATIONS OF ONE OR
47 MORE CANDIDATES RECOMMENDED BY THE COMMISSION TO THE GOVERNOR, SUCH
48 COMMENT TO BE TRANSMITTED TO THE GOVERNOR NOT LATER THAN THIRTY DAYS
49 BEFORE THE FIRST DAY ON WHICH THE GOVERNOR IS AUTHORIZED TO NOMINATE ONE
50 OF SUCH CANDIDATES.

51 3. THE RULE SPECIFIED IN SUBDIVISION TWO OF THIS SECTION SHALL PROVIDE
52 FOR APPOINTMENT OF A NOMINATION COMMITTEE FOR SUCH BAR ASSOCIATION OR
53 OTHER CIVIC, COMMUNITY OR PROFESSIONAL ORGANIZATION OF NOT LESS THAN
54 FIVE PERSONS FAIRLY REPRESENTATIVE OF SUCH ASSOCIATION OR ORGANIZATION;
55 A METHOD BY WHICH SUCH NOMINATION COMMITTEE TIMELY SHALL SOLICIT AND MAY
56 RECEIVE COMMENTS FROM THE MEMBERS OF SUCH ASSOCIATION OR ORGANIZATION;

1 AND PROCEDURES BY WHICH SUCH NOMINATION COMMITTEE FAIRLY SHALL EVALUATE
2 SUCH COMMENTS, PROPOSE ONE OR MORE CANDIDATES TO THE COMMISSION, AND
3 MAKE PUBLIC COMMENT TO THE GOVERNOR ON THE QUALIFICATIONS OF ONE OR MORE
4 CANDIDATES RECOMMENDED BY THE COMMISSION. IN ENACTING OR AMENDING SUCH
5 RULE, THE COMMISSION SHALL CONSIDER EXISTING STATUTORY AND REGULATORY
6 PROCEDURES FOR THE EVALUATION OR NOMINATION OF CANDIDATES FOR JUDICIAL
7 OFFICE IN THIS STATE.

8 S 10. Subdivision 2 of section 212 of the judiciary law is amended by
9 adding a new paragraph (s) to read as follows:

10 (S) AT THE REQUEST OF THE COMMISSION ON JUDICIAL NOMINATION, ASSIST
11 SUCH COMMISSION TO MAINTAIN A PUBLIC WEBSITE IN ACCORDANCE WITH SUBDIVI-
12 SION SEVEN OF SECTION SIXTY-FOUR OF THIS CHAPTER, AND TO MAINTAIN AN
13 ACCURATE DATABASE OF BAR ASSOCIATIONS AND CIVIC, COMMUNITY AND PROFES-
14 SIONAL ORGANIZATIONS OF THIS STATE REQUIRED TO RECEIVE FROM SUCH COMMIS-
15 SION VACANCY NOTICES FOR THE COURT OF APPEALS PURSUANT TO SUBDIVISION
16 ONE OF SECTION SIXTY-NINE OF THIS CHAPTER.

17 S 11. This act shall take effect on the sixtieth day after this bill
18 shall have become a law; provided that the commission on judicial nomi-
19 nation immediately is directed to revise its rules to conform with the
20 provisions of this act, and to solicit for registration with the commis-
21 sion bar associations and other organizations of this state specified in
22 subdivision 1 of section 69 of the judiciary law, as added by section
23 nine of this act.