

**STATE OF TENNESSEE**

**PUBLIC CHAPTER NO. 517**

**SENATE BILL NO. 1573**

**By Woodson, Haynes, Overbey**

Substituted for: House Bill No. 1448

By McCord, Coleman, Lundberg, Hardaway

AN ACT to amend Tennessee Code Annotated, Title 2; Title 4, Chapter 29, Part 2; Title 16 and Title 17, relative to judges.

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

SECTION 1. Tennessee Code Annotated, Title 17, Chapter 4, Part 1, is amended by deleting the part in its entirety and by substituting instead the following:

§ 17-4-101. It is the declared purpose and intent of the general assembly by the passage of this chapter to assist the governor in finding and appointing the best qualified persons available for service on the appellate courts of Tennessee, and to assist the electorate of Tennessee in electing the best qualified persons to the courts; to better insulate the judges of the courts from political influence and pressure; to improve the administration of justice; to enhance the prestige of and respect for the courts by minimizing the necessity of political activities by appellate judges; and to make the courts less political.

§ 17-4-102.

(a) There is established as a part of the judicial branch of the state a judicial nominating commission, to be composed of seventeen (17) members as follows:

(1) Eight (8) members shall be appointed by the Speaker of the Senate;

(A) Two (2) of the members to be appointed from each of the state's three (3) grand divisions, and the remaining two (2) members to be appointed at-large; and

(B) At least five (5) of the members to be attorneys;

(2) Eight (8) members shall be appointed by the Speaker of the House of Representatives;

(A) Two (2) of the members to be appointed from each of the state's three (3) grand divisions, and the remaining two (2) members to be appointed at-large; and

(B) At least five (5) of the members to be attorneys;  
and

(3) One (1) non-attorney member shall be appointed at-large by joint action of the Speaker of the Senate and the Speaker of the House of Representatives.

Not more than three (3) of the members appointed at-large may be residents of the same grand division.

(b) The entire membership of the judicial selection commission shall be vacated and shall be replaced by new appointments made to the judicial nominating commission pursuant to this section. In order to stagger the terms of the newly appointed commission members, initial appointments shall be made as follows:

(1) Two (2) of the Senate Speaker's initial appointments shall be made for terms of two (2) years each;

(2) Two (2) of the House Speaker's initial appointments shall be made for terms of two (2) years each;

(3) The Speakers' joint appointment shall be made for a term of two (2) years;

(4) Three (3) of the Senate Speaker's initial appointments shall be made for terms of four (4) years each;

(5) Three (3) of the House Speaker's initial appointments shall be made for terms of four (4) years each;

(6) Three (3) of the Senate Speaker's initial appointments shall be made for terms of six (6) years each; and

(7) Three (3) of the House Speaker's initial appointments shall be made for terms of six (6) years each.

Thereafter, the terms for all appointments shall comply with § 17-4-106 and § 17-4-107(a).

(c) In making the appointments to the judicial nominating commission, each speaker shall do so with a conscious intention of selecting a body that reflects diversity with respect to:

(1) Race, including the dominant ethnic minority population;

(2) Gender; and

(3) Representation of rural areas as well as urban centers.

(d) The administrative office of the courts shall develop and post on its Web site a downloadable information and application form for citizens who wish to be considered for appointment to the judicial nominating commission. The form shall indicate all qualifications required for appointment to the commission. To be considered for appointment, each applicant must complete, sign and submit the form. Appropriate deadlines for submission of such forms shall be established by the administrative office of the courts in advance of each scheduled vacancy and promptly after the occurrence of any unscheduled vacancy. Each time that deadlines are so established, in addition to notice posted on its Web site, the administrative office of the courts shall take appropriate action to notify the general public and shall provide written notification to the Speaker of the Senate and the Speaker of the House of Representatives. Immediately following the occurrence of any such deadline, the administrative office of the courts shall post on its Web site a summary report of all qualified applicants for the vacant position or positions. The summary report shall include at least the name, county of residence and occupation of each applicant. For a period of fourteen (14) days following the posting of the summary report, the administrative office of the courts shall receive public comments from interested persons and organizations. At the conclusion of the period for public comments, the application forms and corresponding public comments shall be forwarded to the appropriate speaker or speakers for consideration and action. Within fourteen (14) days following receipt of such information, the speaker or speakers shall make the required appointments from the pool of qualified applicants. However, for good cause, either speaker may fill a vacancy by appointing a qualified person not included within such pool of applicants if the speaker provides written notice to the administrative office of the courts stating the reasons for appointing a person not included within such pool of applicants.

§ 17-4-103.

(a) Each member of the judicial nominating commission shall be a citizen of the United States, shall be at least thirty (30) years of age, and shall have been a citizen of this state for at least five (5) years immediately prior to appointment. Any member appointed from one (1) of the state's grand divisions shall have been a resident of that grand division for at least one (1) year immediately prior to appointment.

(b) Each attorney member shall be duly licensed to practice by the Tennessee supreme court.

§ 17-4-104.

(a) No member of the judicial nominating commission shall be a salaried office holder of the State of Tennessee or the United States, nor shall any member of the commission hold any office in any political party or political organization; provided, that members of the national guard and members of any armed forces reserve organization, any district attorney general or an employee of a district attorney general, or any district public

defender or an employee of a district public defender shall not be considered as salaried office holders.

(b) Any member of the judicial nominating commission who becomes a salaried office holder of the State of Tennessee or the United States or who accepts any office in any political party or political organization ipso facto vacates the member's office as a member of the commission.

(c) No member of the judicial nominating commission shall be a registered employer of a lobbyist in this state or a registered lobbyist in this state. Any member of the commission who becomes a registered employer of a lobbyist or a registered lobbyist in this state ipso facto vacates the member's office as a member of this commission.

§ 17-4-105.

(a) The term of office of each member of the judicial nominating commission shall begin on July 1, 2009.

(b)(1) As soon as practicable after July 1, 2009, the judicial nominating commission shall meet in an organizational session convened by the chief justice of the supreme court.

(2) At the first organizational meeting, the chief justice shall preside as temporary chair, and a permanent chair shall be elected from the membership of the commission.

(3) If the chief justice is unable to convene the commission or serve as temporary chair, the chief justice may designate another member of the supreme court to so serve.

(c) The commission may elect such other officers as it deems necessary and proper, and may adopt and from time to time amend bylaws and rules of procedure for the conduct of its business and discharge of its duties.

(d) The commission may employ such secretarial and clerical assistance as it deems necessary.

§ 17-4-106.

(a) Except as otherwise provided in § 17-4-102(b) or § 17-4-107(a), the term of a member of the judicial nominating commission shall be six (6) years.

(b) No member shall be eligible for reappointment for a successive term, unless the member's previous appointment was for an initial or partial term of twenty-four (24) months or less.

§ 17-4-107.

(a) A vacancy on the judicial nominating commission shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

(b) Any member of the judicial nominating commission who misses four (4) meetings of the commission during the member's term of office ipso facto vacates the member's office as a member of the commission.

§ 17-4-108.

(a) Members of the judicial nominating commission and judicial performance evaluation commission shall not receive any compensation for their services but shall be reimbursed for their official travel expenses pursuant to policies and guidelines promulgated by the supreme court.

(b) Subject to budgetary restrictions, the administrative office of the courts shall pay or reimburse the necessary expenses authorized or incurred by the judicial nominating commission and the judicial performance evaluation commission in the performance of the duties pursuant to policies and guidelines promulgated by the supreme court.

§ 17-4-109.

(a)(1) If a vacancy occurs during the term of office of a judge of the court of appeals or court of criminal appeals, then the judicial nominating commission shall, at the earliest practicable date, hold a public meeting in the grand division from which such vacancy is to be filled. However, if an incumbent judge fails to file a written declaration of candidacy required by § 17-4-114 or § 17-4-115, or if the commission is reliably informed that a vacancy is impending for another reason, then the public meeting may be held prior to actual occurrence of the vacancy.

(2) If a vacancy occurs during the term of office of a judge of the supreme court, then the judicial nominating commission shall, at the earliest practicable date, hold a public meeting in Nashville. However, if an incumbent judge fails to file a written declaration of candidacy as required by § 17-4-114 or § 17-4-115, or if the commission is reliably informed that a vacancy is impending for another reason, then the public meeting may be held prior to actual occurrence of the vacancy.

(b) Notice of the time, place and purpose of the meeting shall be given by newspapers, radio news, and television news and by such other means as the commission deems proper.

(c) Any citizen, attorney or non-attorney, shall be entitled to attend the meeting and express orally or in writing such citizen's approval of or objections to any suggested nominee for the judicial vacancy. Any

licensed attorney may appear and make a statement, oral or written, in support of such attorney's own nomination.

(d) After one (1) public hearing, the commission may hold such additional interviews with the candidates as it deems necessary. The commission shall make independent investigation and inquiry to determine the qualifications of possible nominees for the judicial vacancy and shall endeavor to encourage qualified attorneys to accept nomination and agree to serve if appointed to the judicial vacancy. All hearings, interviews, meetings and deliberations of the commission shall be conducted publicly and shall comply with Title 8, Chapter 44, Part 1; provided, however, when selecting nominees, commission members shall vote anonymously by written ballots, but such ballots shall be collected, announced and tallied at the meeting by the presiding officer. The Tennessee Bureau of Investigation Level II security clearance as to nominees shall be performed exclusively at the direction of the governor, acting pursuant to § 17-4-112(a)(2).

(e) As soon as practicable, and no later than sixty (60) days from receipt of written notice from the governor that a vacancy has occurred, the commission, with the assent of a majority of all the members to which it is entitled under § 17-4-102(a), shall select three (3) persons whom the commission deems best qualified and available to fill the vacancy and shall certify the names of the three (3) persons to the governor as nominees for the judicial vacancy. However, if an incumbent judge fails to file a written declaration of candidacy as required by § 17-4-114 or § 17-4-115, or if the commission is reliably informed that a vacancy is impending for any other reason, then the commission may meet, select such persons and certify the names of such nominees to the governor prior to actual receipt of written notice from the governor that a vacancy has occurred.

(f) The judicial nominating commission, in compiling its list of nominees for a supreme court position, shall ensure that the requirements of Article VI, § 2, of the Tennessee Constitution are satisfied.

#### § 17-4-110.

(a) All nominees of the judicial nominating commission must be attorneys who are duly licensed to practice law in the State of Tennessee and who are fully qualified under the Constitution and statutes of Tennessee to fill the office for which they are nominated.

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

§ 17-4-111. A member of the judicial nominating commission is not eligible to be nominated by the commission during the member's tenure and the

two-year period immediately following conclusion of the member's service on the commission.

§ 17-4-112.

(a)(1) When a vacancy occurs in the office of an appellate court after July 1, 2009, by death, resignation or otherwise, the governor shall fill the vacancy by appointing one (1) of the three (3) persons nominated by the judicial nominating commission, or the governor may require the commission to submit one (1) other panel of three (3) additional nominees. Within sixty (60) days following receipt of the additional panel of nominees, the governor shall fill the vacancy by appointing any one (1) of the six (6) nominees certified by the commission.

(2) After receiving the commission's panel or panels of nominees, but prior to making an appointment pursuant to subdivision (a)(1), the governor shall direct the Tennessee Bureau of Investigation or other appropriate agencies to perform appropriate financial and criminal background investigations and inquiries of the prospective appointees, and the governor shall review and assess the results thereof.

(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.

§ 17-4-113.

(a) If the judicial nominating commission does not furnish a list of three (3) nominees to the governor within sixty (60) days after receipt of written notice from the governor that a vacancy has occurred, then the governor may fill the vacancy by appointing any person who is duly licensed to practice in the State of Tennessee and who is fully qualified under the Constitution and statutes of Tennessee to fill the office.

(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.

§ 17-4-114.

(a)(1) An incumbent appellate judge, who seeks election to fill the unexpired term of the office to which the incumbent judge was appointed, must qualify by filing with the State Election Commission a written declaration of candidacy to fill the unexpired term. The declaration must be filed not later than twelve o'clock (12:00) noon prevailing time on the first Thursday in February before the next regular August election occurring more than thirty (30) days after occurrence of the vacancy that was filled by the incumbent appellate judge. After timely filing such 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 such declaration of candidacy.

(2) An incumbent appellate judge, who seeks election to fill the unexpired term of the office to which the incumbent judge was appointed but who was appointed after the first Thursday in February before the next regular August election occurring more than thirty (30) days after occurrence of the vacancy that was filled by the incumbent judge, must qualify by filing with the State Election Commission a written declaration of candidacy to fill the unexpired term. The declaration must be filed not later than the first Thursday occurring at least one (1) full week after the appointment. After timely filing such 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 such declaration of candidacy.

(3) Title 2, Chapter 5, Part 1, does not apply to an election in which an incumbent appellate judge seeks election to fill the unexpired term of the office to which the incumbent judge was appointed, unless a contested election is required by subsection (c) or subdivision (d)(2).

(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 Tennessee 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 the judicial performance evaluation commission shall not include an evaluation or retention recommendation for the incumbent judge within the final report publicly disclosed pursuant to § 17-4-201(c), and the judge's name shall not be submitted to the electorate.

(c) If the judicial performance evaluation commission makes a recommendation "for replacement" of an incumbent appellate judge but the judge nevertheless files or has filed the declaration of candidacy

required by subsection (a), then the provisions of subdivision (b)(1) shall not be applicable and the unexpired term shall be filled by means of a contested election conducted in accordance with general election law set forth in Title 2. If the judge's term of office is abbreviated because of death, resignation or removal after the filing of such declaration of candidacy but prior to the third Thursday in May preceding the regular August general election, then the vacancy shall be filled in accordance with § 17-4-112 or § 17-4-113, and no such contested election shall be held. In accordance with § 2-13-203, each political party may nominate a candidate and independent candidates may qualify under the general election law for the contested election which shall be the regular August election. After a judge is elected under this subsection (c), the provisions of this chapter concerning the evaluation and retention process shall again apply.

(d)(1) If a majority of those voting on the question vote to retain the candidate, then the candidate is duly elected to the office for the remainder of the term of the predecessor and given a certificate of election.

(2) If a majority or one half (1/2) of those voting on the question vote to replace the candidate, then a vacancy exists in such office as of September 1 following the regular August election. The governor shall fill the vacancy in such office in accordance with § 17-4-112 or § 17-4-113; however, at the next regular August general election, this office shall be filled by means of a contested election conducted in accordance with general election law set forth in Title 2. In accordance with § 2-13-203, each political party may nominate a candidate and independent candidates may qualify under the general election law for the contested election. After the office is filled by contested election under this subdivision (d)(2), the provisions of this chapter concerning the evaluation and retention process shall again apply to such office.

#### § 17-4-115.

(a)(1) An incumbent appellate judge, who seeks election or re-election for a full eight-year term, must qualify by filing with the State Election Commission a written declaration of candidacy. The declaration must be filed not later than twelve o'clock (12:00) noon prevailing time on the first Thursday in February immediately preceding the end of the term. After timely filing such 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 such declaration of candidacy.

(2) An incumbent appellate judge, who seeks election for a full eight-year term but who was appointed to such office after the first Thursday in February before the next regular August election

occurring more than thirty (30) days after occurrence of the vacancy that was filled by the incumbent appellate judge, must qualify by filing with the State Election Commission a written declaration of candidacy. The declaration must be filed not later than the first Thursday occurring at least one (1) full week after the appointment. After timely filing such 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 such declaration of candidacy.

(3) Title 2, Chapter 5, Part 1, does not apply to an election in which an incumbent appellate judge seeks election or re-election for a full eight-year term, unless a contested election is required by subsection (c) or subdivision (d)(2).

(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 Tennessee 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 the judicial performance evaluation commission shall not include an evaluation or retention recommendation for the incumbent judge within the final report publicly disclosed pursuant to § 17-4-201(c), and the judge's name shall not be submitted to the electorate.

(c) If the judicial performance evaluation commission makes a recommendation "for replacement" of an incumbent appellate judge but the judge nevertheless files or has filed the declaration of candidacy required by subsection (a), then subdivision (b)(1) shall not be applicable and the eight-year term shall be filled by means of a contested election conducted in accordance with general election law set forth in Title 2. If the judge's term of office is abbreviated because of death, resignation or removal after the filing of such declaration of candidacy but prior to the third Thursday in May preceding the regular August general election, then the vacancy shall be filled in accordance with § 17-4-112 or § 17-4-113, and no such contested election shall be held. In accordance with § 2-13-203, each political party may nominate a candidate and independent candidates may qualify under the general election law for the contested

election which shall be the regular August election. After a judge is elected under this subsection (c), the provisions of this chapter concerning the evaluation and retention process shall again apply.

(d)(1) If a majority of those voting on the question vote to retain the candidate, then the candidate is duly elected to the office for a full eight-year term and given a certificate of election.

(2) If a majority or one half (1/2) of those voting on the question vote to replace the candidate, then a vacancy exists in such office as of September 1 following the regular August election. The governor shall fill the vacancy in such office in accordance with § 17-4-112 or § 17-4-113; however, at the next regular August general election, this office shall be filled by means of a contested election conducted in accordance with general election law set forth in Title 2. In accordance with § 2-13-203, each political party may nominate a candidate and independent candidates may qualify under the general election law for the contested election. After the office is filled by contested election under this subdivision (d)(2), the provisions of this chapter concerning the evaluation and retention process shall again apply to such office.

#### § 17-4-116.

(a) If an incumbent appellate court judge, whether appointed or elected, fails to file a declaration of candidacy for election to an unexpired term or to a full eight-year term within the prescribed time, or if such judge withdraws as a candidate after receiving a recommendation "for retention" from the judicial performance evaluation commission and filing the required declaration of candidacy, then a vacancy is created in the office upon expiration of the incumbent's term effective September 1. In this event, the vacancy shall be filled by the governor in accordance with § 17-4-112 or § 17-4-113. The appointment is subject to the action of the electorate in the next regular August election. The appointee shall file a declaration of candidacy and be voted on as provided in § 17-4-114 and § 17-4-115.

(b) If the vacancy occurs more than thirty (30) days before the regular August election preceding the end of the term, the appointee is subject to election as provided in § 17-4-114 and § 17-4-115.

(c)(1) If a majority of those voting on the question vote to retain the candidate, then candidate is duly elected to the office for the remainder of the unexpired term or a full eight-year term, as the case may be, beginning September 1, and the candidate shall be given a certificate of election.

(2) If a majority or one half (1/2) of those voting on the question vote to replace the candidate, then a vacancy exists in such office as of September 1 following the regular August

election. The governor shall fill the vacancy in such office in accordance with § 17-4-112 or § 17-4-113; however, at the next regular August general election, this office shall be filled by means of a contested election conducted in accordance with general election law set forth in Title 2. In accordance with § 2-13-203, each political party may nominate a candidate and independent candidates may qualify under the general election law for the contested election. After the office is filled by contested election under this subdivision (c)(2), the provisions of this chapter concerning the evaluation and retention process shall again apply to such office.

(d) If the vacancy occurs less than thirty-one (31) days before the regular August election, the appointee shall not be voted on in such election and shall take office on September 1. The term of office shall be as provided in § 17-4-112(b).

§ 17-4-117. The administrative office of the courts shall keep and maintain all records of the judicial nominating commission as well as furnishing such commission with any other secretarial or clerical services or assistance it may require. It is further the duty of such administrative office of the courts to notify all commission members of the date, time and place of any commission meetings.

§ 17-4-118.

(a) After July 1, 2009, 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 one (1) of the three (3) persons nominated by the judicial nominating commission.

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

(c) The judicial nominating commission shall follow the process established in § 17-4-109 except that the commission shall hold a public meeting in the judicial district from which such vacancy is to be filled.

(d) If the judicial district is one (1) of the five (5) smallest judicial districts according to the 2000 federal census or any subsequent federal census, the judicial nominating commission may submit two (2) names to the governor.

(e) At the next regular August election recurring 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 2. Tennessee Code Annotated, Section 17-4-201, is amended by deleting the section in its entirety and substituting instead the following:

(a)(1) By rule, the supreme court shall establish a judicial performance evaluation program for appellate court judges. The purpose of the program shall be to assist the public in evaluating the performance of incumbent appellate court judges. The judicial performance evaluation commission, established pursuant to subsection (b), shall perform the required evaluations. The commission shall make a recommendation either "for retention" or "for replacement" of each appellate court judge; provided, that the commission shall not evaluate or make any retention recommendation with regard to any appellate judge whose term of office is abbreviated because of death, resignation or removal. Furthermore, the commission shall not include within the final report, publicly disclosed pursuant to subsection (c), an evaluation or retention recommendation for any appellate judge whose term of office is abbreviated because of death, resignation or removal or who fails to timely file a declaration of candidacy as required by § 17-4-114(a) or § 17-4-115(a), unless the judge is a candidate for another office subject to evaluation under this section.

(2) If an incumbent appellate judge holds office for one (1) year or more preceding the deadline for filing the required declaration of candidacy for either an unexpired term or a full eight-year term, then evaluation procedures shall be based on the results of any evaluations performed throughout the judge's service on the appellate bench, evaluation surveys, personal information contained in an approved self-reporting form and such other comments and documents as the commission receives from any other reliable source. However, if an incumbent judge holds office for less than one (1) year preceding such deadline, then evaluation procedures shall be based on personal information contained in the self-reporting form, the judge's application to the judicial nominating commission and such other comments and documents as the commission receives from any other reliable source.

(3) Information collected pursuant to subdivision (a)(2) shall be confidential and shall be publicly disclosed only in the manner permitted by subsection (c). Upon request, each member of the judicial performance evaluation commission shall be given complete access to any individual survey, form, application, comment and document submitted, conveyed or compiled for the purpose of judicial evaluation; however, each such member must protect the confidentiality of such information as well as the anonymity of survey respondents.

(4)(A) At least thirty (30) days prior to the deadline for filing a declaration of candidacy, required by § 17-4-114(a)(1) or § 17-4-115(a)(1), the judicial performance evaluation commission shall provide an incumbent appellate judge with a draft of the commission's evaluation and shall provide the judge with a reasonable opportunity to comment or respond either personally or in writing.

(B) As soon as is reasonably practicable under the circumstances, but not less than three (3) days prior to the deadline for filing a declaration of candidacy required by § 17-4-

114(a)(2) or § 17-4-115(a)(2), the judicial performance evaluation commission shall provide an incumbent appellate judge with a draft of the commission's evaluation and shall provide the judge with a reasonable opportunity to comment or respond either personally or in writing.

(b)(1) The judicial performance evaluation commission shall be composed of nine (9) members.

(2) The judicial council shall appoint five (5) of the members, of whom three (3) shall be state court judges, one (1) shall be an attorney and one (1) shall be a non-attorney. No more than two (2) of those appointed shall reside in the same grand division.

(3) The Speaker of the Senate shall appoint one (1) attorney member and one (1) non-attorney member. No more than one (1) of those appointed shall reside in the same grand division.

(4) The Speaker of the House of Representatives shall appoint one (1) attorney member and one (1) non-attorney member. No more than one (1) of those appointed shall reside in the same grand division.

(5) The supreme court's evaluation procedure may permit the judicial performance evaluation commission to perform an evaluation with less than the full membership in panels, but the full commission shall approve the evaluation.

(6) The appointing authorities for the judicial performance evaluation commission shall make appointments that approximate the population of the state with respect to race and gender. In appointing attorneys to the commission, the speakers shall receive, but shall not be bound by, recommendations from any interested person or organization.

(7) To stagger the terms of judicial performance evaluation commission members, beginning July 1, 2009, the three (3) non-attorney members on the commission shall serve six-year transition terms; the three (3) state court judges on the commission shall serve four-year transition terms; and the three (3) attorney members on the commission shall serve two-year transition terms. At the conclusion of the transition terms, each regular term of a commission member shall be six (6) years. A vacancy on the commission shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

(8) No commission member shall serve more than two (2) terms, including any partial term.

(9) A member of the judicial performance evaluation commission is not eligible to seek an appellate judgeship that becomes available as a result of, or related to, the commission's recommendation for replacement of an incumbent appellate judge as set out in subsection (a).

(c)(1) The judicial performance evaluation program shall require publication and disclosure of a final report. The final report shall not include any individual record or evaluation but may include, for each appellate judge, the individual final scores for the survey results. The final report shall be made available for public inspection on the first Thursday in March preceding the regular August election. On the first Sunday in July preceding the regular August election, the final report shall be published in a daily newspaper of general circulation in the Tri-Cities area, Knoxville, Chattanooga, Nashville, Jackson and Memphis. The final report for each appellate court judge may not exceed six hundred (600) words.

(2) As soon as is reasonably practicable under the circumstances, in order to assist the public in electing the best qualified persons to the appellate courts, the commission shall cause supplemental final reports to be published as may be necessitated by the filing of declarations of candidacy, required by § 17-4-114(a)(2) or § 17-4-115(a)(2).

(d) The judicial performance evaluation program, including the public report and the ballot information, shall apply to each appellate court judge who seeks to serve a complete term after July 1, 2009.

SECTION 3. Tennessee Code Annotated, Title 17, Chapter 4, is amended by adding a new section thereto:

The judicial nominating commission and the judicial performance evaluation commission created by this act are the successors to the judicial selection commission and the judicial evaluation commission respectively. All rules, procedures, records, reports, functions and duties carried out by the prior commissions are hereby transferred to the successor entities.

SECTION 4. Tennessee Code Annotated, Section 4-29-233(a), is amended by adding the following new, appropriately designated subdivisions thereto:

(1) Judicial nominating commission, created by § 17-4-102;

(2) Judicial performance evaluation commission, created by § 17-4-201;

SECTION 5. Tennessee Code Annotated, Section 4-29-229(a), is amended by deleting subdivisions (46) and (47).

SECTION 6. Section 5 of this act shall take effect on becoming law, the public welfare requiring it. The remaining provisions of this act shall take effect July 1, 2009, the public welfare requiring it.

**PASSED: June 12, 2009**

  
\_\_\_\_\_  
RON RAMSEY  
SPEAKER OF THE SENATE

  
\_\_\_\_\_  
KENT WILLIAMS, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 25th day of June 2009**

  
\_\_\_\_\_  
PHIL BREDESEN, GOVERNOR