

**2013 -- S 0471 SUBSTITUTE A AS AMENDED**

=====  
LC01767/SUB A  
=====

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2013**

-----  
A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - COURTS - JUDICIAL SELECTION

Introduced By: Senator Maryellen Goodwin

Date Introduced: February 28, 2013

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 8-16.1-6 of the General Laws in Chapter 8-16.1 entitled "Judicial  
2 Selection" is hereby amended to read as follows:

3           ~~**8-16.1-6. Nomination and appointment of judges. [Repealed effective June 30, 2013.]**~~

4           **Nomination and appointment of judges [Repealed effective June 30, 2014.]** -- (a) (1) The  
5 governor shall immediately notify the commission of any vacancy or prospective vacancy of a  
6 judge of any state court other than the Rhode Island supreme court. The commission shall  
7 advertise for each vacancy and solicit prospective candidates and shall consider names submitted  
8 from any source. Within ninety (90) days of any vacancy the commission shall publicly submit  
9 the names of not less than three (3) and not more than five (5) highly qualified persons for each  
10 vacancy to the governor.

11           (2) Notwithstanding any other law to the contrary, any individual whose name was  
12 publicly submitted to the governor by the commission as described in subsection (1) above, shall  
13 also be eligible for subsequent nomination by the governor for any vacancy or prospective  
14 vacancy of a judge in the same court for which that particular individual had previously applied  
15 except for a vacancy in the position of presiding justice, chief justice, or chief judge.

16           (3) Such individuals shall remain eligible for nomination to fill any vacancy or  
17 prospective vacancy within the same court to which they previously applied for a period of five  
18 (5) years from the date their name or names were publicly submitted to the governor by the  
19 commission unless such individuals withdraw from future consideration in writing to the judicial

1 nominating commission. However, such individuals must reapply for any subsequent vacancy or  
2 prospective vacancy in the same court for the position of presiding justice, chief justice, or chief  
3 judge.

4 (4) Subject to the eligibility requirements set forth above, the governor shall fill any  
5 vacancy of any judge of the Rhode Island superior court, family court, district court, workers'  
6 compensation court, or any other state court which the general assembly may from time to time  
7 establish, by nominating one of the three (3) to five (5) highly qualified persons forwarded to him  
8 or her by the commission for the court where the vacancy occurs, or by nominating another  
9 individual who has previously applied for a vacancy or prospective vacancy within the same court  
10 and whose name had been previously publicly submitted to the governor within the previous five  
11 (5) years.

12 (b) The governor shall fill any vacancy within twenty-one (21) days of the public  
13 submission by the commission.

14 (c) Each nomination shall be delivered forthwith to the secretary of the senate for  
15 presentation to the senate, and by and with the advice and consent of the senate, each nominee  
16 shall be appointed by the governor to serve subject to the general laws. The senate shall, after  
17 seven (7) calendar days of receipt of the nomination consider the nomination, but if the senate  
18 fails within ninety (90) days after the submission to confirm the nominee or if the senate does not  
19 by a majority vote of its members extend the deliberation an additional seven (7) calendar days,  
20 the governor shall appoint some other person to fill the vacancy and shall submit his or her  
21 appointment to the senate for confirmation in like manner until the senate shall confirm the  
22 nomination. If the nominee is rejected by the senate, the commission shall submit a new list of  
23 three (3) to five (5) candidates to the governor for the purpose of nomination in accordance with  
24 this chapter. Any new list may include but need not be limited to the names of any candidates  
25 who were previously submitted to the governor by the commission but who were not forwarded  
26 to the senate for its advice and consent.

27 (d) During the time for consideration of the nominees by the senate, the senate judiciary  
28 committee shall conduct an investigation and public hearing on the question of the qualifications  
29 of the nominee or nominees. At the public hearing, the testimony of every witness shall be taken  
30 under oath and stenographic records shall be taken and maintained. Further, the senate judiciary  
31 committee shall during the course of its investigation and hearing have the power upon majority  
32 vote of the committee members present to issue witness subpoenas, subpoenas duces tecum, and  
33 orders for the production of books, accounts, papers, records, and documents which shall be  
34 signed and issued by the chairperson of the committee, or the person serving in his or her

1 capacity. All such subpoenas and orders shall be served as subpoenas in civil cases in the superior  
2 court are served, and witnesses so subpoenaed shall be entitled to the same fees for attendance  
3 and travel as provided for witnesses in civil cases in the superior court. If the person subpoenaed  
4 to attend before the committee fails to obey the command of the subpoena without reasonable  
5 cause, refuse to be sworn, or to be examined, or to answer a legal and pertinent question, or if any  
6 person shall refuse to produce books, accounts, papers, records, and documents material to the  
7 issue, set forth in an order duly served on him or her, the committee by majority vote of the  
8 committee members present may apply to any justice of the superior court, for any county, upon  
9 proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than  
10 five (5) days, directing the person to show cause before the justice who made the order or any  
11 other justice of the superior court, why he or she should not be adjudged in contempt. Upon the  
12 return of the order, the justice before whom the matter is brought on for hearing shall examine  
13 under oath the person, and the person shall be given an opportunity to be heard, and if the justice  
14 shall determine that the person has refused without reasonable cause or legal excuse to be  
15 examined or to answer a legal and pertinent question, or to produce books, accounts, papers,  
16 records, and documents material to the issue which he or she was ordered to bring or produce, he  
17 or she may forthwith commit the offender to the adult correctional institution, there to remain  
18 until the person submits to do the act which he or she was so required to do, or is discharged  
19 according to law.

20 (e) The committee shall, for the purpose of investigating the qualifications of the  
21 nominee or nominees, be furnished with a report compiled by the state police in conjunction with  
22 the attorney general's office indicating the determinations and findings of the state police and  
23 attorney general's office investigations concerning the background of the nominee or nominees,  
24 and the report shall include, but not be limited to, the following:

25 (1) Whether the nominee has ever been convicted of or pleaded guilty to a misdemeanor  
26 or felony in this or any other state or foreign country;

27 (2) Whether the nominee has ever filed a personal bankruptcy petition or an assignment  
28 for the benefit of creditors in this or any other state or foreign country; and whether the nominee  
29 has ever been a partner in, held ten percent (10%) or more of stock in, or held office in any sole  
30 proprietorship, partnership, or corporation that has been involved in bankruptcy or receivership  
31 actions as a debtor or because of insolvency at the time the nominee was a partner in, held ten  
32 percent (10%) or more stock in, or held office in any such sole proprietorship, partnership, or  
33 corporation;

34 (3) Whether the nominee has ever had a civil judgment rendered against him or her

1 arising out of an allegation of fraud, misrepresentation, libel, slander, professional negligence, or  
2 any intentional tort in this state or any other state or foreign country;

3 (4) The state police in conjunction with the attorney general's department shall provide  
4 in their report the names and addresses of each and every source of their information.

5 (f) The reports set forth in this section shall be delivered to the chairperson and members  
6 of the senate judiciary committee in addition to the nominee or nominees only prior to the  
7 commencement of the public hearing. Provided, however, that if the nominee or nominees  
8 withdraw or decline the appointment prior to the public hearing then the report or reports shall be  
9 returned to the chairperson of the judiciary committee and destroyed.

10 (g) The committee shall also require a financial statement to be submitted by each  
11 nominee, prior to the public hearing, to the chairperson of the senate judiciary committee, to  
12 investigate each nominee to determine his or her compliance with the provisions of chapter 14 of  
13 title 36.

14 (h) Any associate justice of any state court who is appointed to serve as the chief or  
15 presiding justice of that court on an interim basis shall retain his or her status as an associate  
16 justice until the appointment to chief or presiding justice is made permanent.

17 (i) In case a vacancy shall occur when the senate is not in session, the governor shall  
18 appoint some person from a list of three (3) to five (5) persons submitted to the governor by the  
19 commission to fill the vacancy until the senate shall next convene, when the governor shall make  
20 an appointment as provided in this section.

21 ~~8-16.1-6. Nomination and appointment of judges. [Effective June 30, 2012.] --~~

22 **Nomination and appointment of judges. [Effective June 30, 2014.] --** (a) The governor shall  
23 immediately notify the commission of any vacancy or prospective vacancy of a judge of any state  
24 court other than the Rhode Island supreme court. The commission shall advertise for each  
25 vacancy and solicit prospective candidates and shall consider names submitted from any source.  
26 Within ninety (90) days of any vacancy the commission shall publicly submit the names of not  
27 less than three (3) and not more than five (5) highly qualified persons for each vacancy to the  
28 governor. The governor shall fill any vacancy of any judge of the Rhode Island superior court,  
29 family court, district court, workers' compensation court, or any other state court which the  
30 general assembly may from time to time establish, by nominating one of the three (3) to five (5)  
31 highly qualified persons forwarded to him or her by the commission for the court where the  
32 vacancy occurs.

33 (b) The governor shall fill any vacancy within twenty-one (21) days of the public  
34 submission by the commission.

1           (c) Each nomination shall be forwarded forthwith to the senate, and by and with the  
2 advice and consent of the senate, each nominee shall be appointed by the governor to serve  
3 subject to the general laws. The senate shall, after seven (7) calendar days of receipt of the  
4 nomination consider the nomination, but if the senate fails within ninety (90) days after the  
5 submission to confirm the nominee or if the senate does not by a majority vote of its members  
6 extend the deliberation an additional seven (7) calendar days, the governor shall appoint some  
7 other person to fill the vacancy and shall submit his or her appointment to the senate for  
8 confirmation in like manner until the senate shall confirm the nomination. If the nominee is  
9 rejected by the senate, the commission shall submit a new list of three (3) to five (5) candidates to  
10 the governor for the purpose of nomination in accordance with this chapter. Any new list may  
11 include but need not be limited to the names of any candidates who were previously submitted to  
12 the governor by the commission but who were not forwarded to the senate for its advice and  
13 consent.

14           (d) During the time for consideration of the nominees by the senate, the senate judiciary  
15 committee shall conduct an investigation and public hearing on the question of the qualifications  
16 of the nominee or nominees. At the public hearing, the testimony of every witness shall be taken  
17 under oath and stenographic records shall be taken and maintained. Further, the senate judiciary  
18 committee shall during the course of its investigation and hearing have the power upon majority  
19 vote of the committee members present to issue witness subpoenas, subpoenas duces tecum, and  
20 orders for the production of books, accounts, papers, records, and documents which shall be  
21 signed and issued by the chairperson of the committee, or the person serving in his or her  
22 capacity. All such subpoenas and orders shall be served as subpoenas in civil cases in the superior  
23 court are served, and witnesses so subpoenaed shall be entitled to the same fees for attendance  
24 and travel as provided for witnesses in civil cases in the superior court. If the person subpoenaed  
25 to attend before the committee fails to obey the command of the subpoena without reasonable  
26 cause, refuse to be sworn, or to be examined, or to answer a legal and pertinent question, or if any  
27 person shall refuse to produce books, accounts, papers, records, and documents material to the  
28 issue, set forth in an order duly served on him or her, the committee by majority vote of the  
29 committee members present may apply to any justice of the superior court, for any county, upon  
30 proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than  
31 five (5) days, directing the person to show cause before the justice who made the order or any  
32 other justice of the superior court, why he or she should not be adjudged in contempt. Upon the  
33 return of the order, the justice before whom the matter is brought on for hearing shall examine  
34 under oath the person, and the person shall be given an opportunity to be heard, and if the justice

1 shall determine that the person has refused without reasonable cause or legal excuse to be  
2 examined or to answer a legal and pertinent question, or to produce books, accounts, papers,  
3 records, and documents material to the issue which he or she was ordered to bring or produce, he  
4 or she may forthwith commit the offender to the adult correctional institution, there to remain  
5 until the person submits to do the act which he or she was so required to do, or is discharged  
6 according to law.

7 (e) The committee shall, for the purpose of investigating the qualifications of the  
8 nominee or nominees, be furnished with a report compiled by the state police in conjunction with  
9 the attorney general's office indicating the determinations and findings of the state police and  
10 attorney general's office investigations concerning the background of the nominee or nominees,  
11 and the report shall include, but not be limited to, the following:

12 (1) Whether the nominee has ever been convicted of or pleaded guilty to a misdemeanor  
13 or felony in this or any other state or foreign country;

14 (2) Whether the nominee has ever filed a personal bankruptcy petition or an assignment  
15 for the benefit of creditors in this or any other state or foreign country; and whether the nominee  
16 has ever been a partner in, held ten percent (10%) or more of stock in, or held office in any sole  
17 proprietorship, partnership, or corporation that has been involved in bankruptcy or receivership  
18 actions as a debtor or because of insolvency at the time the nominee was a partner in, held ten  
19 percent (10%) or more stock in, or held office in any such sole proprietorship, partnership, or  
20 corporation;

21 (3) Whether the nominee has ever had a civil judgment rendered against him or her  
22 arising out of an allegation of fraud, misrepresentation, libel, slander, professional negligence, or  
23 any intentional tort in this state or any other state or foreign country;

24 (4) The state police in conjunction with the attorney general's department shall provide  
25 in their report the names and addresses of each and every source of their information.

26 (f) The reports set forth in this section shall be delivered to the chairperson and members  
27 of the senate judiciary committee in addition to the nominee or nominees only prior to the  
28 commencement of the public hearing. Provided, however, that if the nominee or nominees  
29 withdraw or decline the appointment prior to the public hearing then the report or reports shall be  
30 returned to the chairperson of the judiciary committee and destroyed.

31 (g) The committee shall also require a financial statement to be submitted by each  
32 nominee, prior to the public hearing, to the chairperson of the senate judiciary committee, to  
33 investigate each nominee to determine his or her compliance with the provisions of chapter 14 of  
34 title 36.

1           (h) Any associate justice of any state court who is appointed to serve as the chief or  
2 presiding justice of that court on an interim basis shall retain his or her status as an associate  
3 justice until the appointment to chief or presiding justice is made permanent.

4           (i) In case a vacancy shall occur when the senate is not in session, the governor shall  
5 appoint some person from a list of three (3) to five (5) persons submitted to the governor by the  
6 commission to fill the vacancy until the senate shall next convene, when the governor shall make  
7 an appointment as provided in this section.

8           SECTION 2. This act shall take effect upon passage and shall be applied retroactively to  
9 ~~June 30~~ [June 29](#), 2013. For purposes of providing clarity, the expressed legislative intent of this  
10 act is that any individual on a list of judicial candidates as of ~~June 30~~ [June 29](#), 2013, shall remain  
11 on that list until June 30, 2014, unless that individual is actually confirmed as a judge prior to  
12 June 30, 2014.

=====  
LC01767/SUB A  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO COURTS AND CIVIL PROCEDURE - COURTS - JUDICIAL SELECTION

\*\*\*

1           This act would make any individual whose name was publicly submitted to the governor  
2 by the judicial nominating commission, eligible for subsequent nomination by the governor until  
3 June 30, 2014, for any vacancy or prospective vacancy of a judge in the same court for which that  
4 particular individual had previously applied except for a vacancy in the position of presiding  
5 justice, chief justice, or chief judge.

6           This act would take effect upon passage and would be applied retroactively to June 30,  
7 2013. For purposes of providing clarity, the expressed legislative intent of this act is that any  
8 individual on a list of judicial candidates as of June 30, 2013, would remain on that list until June  
9 30, 2014, unless that individual were actually confirmed as a judge prior to June 30, 2014.  
10

=====  
LC01767/SUB A  
=====