

ENGROSSED LEGISLATIVE BILL 388

Introduced by DeBoer, 10; Bosn, 25; Cavanaugh, J., 9; Conrad, 46; Dungan, 26; Hallstrom, 1; McKinney, 11; Sorrentino, 39.

A BILL FOR AN ACT relating to judicial nominating commissions; to amend sections 24-802, 24-805, 24-806, 24-808, 24-809, 24-810, and 24-810.01, Reissue Revised Statutes of Nebraska, and section 24-803, Revised Statutes Cumulative Supplement, 2024; to change provisions relating to commission member residency requirements, terms of office, powers and duties of commissioners and the Clerk of the Supreme Court, appointments, vacancies, elections, and automatic removals; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 24-802, Reissue Revised Statutes of Nebraska, is amended to read:

24-802 Except for the judge of the Supreme Court who is required to be a member of a judicial nominating commission, each member or alternate member of a commission shall be a resident of the judicial district or area of the state served by such commission. Except for the Chief Justice, the member of the Supreme Court designated to serve on a particular nominating commission shall not be a member who was originally selected from the district served by such nominating commission.

Sec. 2. Section 24-803, Revised Statutes Cumulative Supplement, 2024, is amended to read:

24-803 (1) Except as provided in subsection (3) of this section, as the term of a member of a judicial nominating commission initially appointed or selected expires, the term of office of each successor member shall be for a period of four years. The Governor shall appoint all successor members of each nominating commission who are judges of the Supreme Court and citizen members or alternate citizen members. The Governor shall appoint two alternate citizen members, not of the same political party, to each nominating commission. The

term of office of an alternate citizen member of a commission shall be for a period of four years. The lawyers residing in the judicial district or area of the state served by a judicial nominating commission shall select all successor and alternate lawyer members of such commission in the manner prescribed in section 24-806. The term of office of an alternate lawyer member of a commission shall be for a period of four years. No member of any nominating commission, including the Supreme Court member of any such commission, shall serve more than a total of twelve consecutive years as a member of the commission, and if such member has served for more than ten years as a member of the commission, he or she shall not be eligible for reelection or reappointment. Alternate lawyer and citizen members shall be selected to fill vacancies in their order of election or appointment.

(2) For purposes of this section and Article V, section 21, of the Constitution of Nebraska, a member of a judicial nominating commission shall be deemed to have served on such commission if he or she was a member of the commission at the time of the publication of the notice required by subsection (1) of section 24-810.

(3) Members of the judicial nominating commissions for the office of judge of the district court shall also serve as members of the judicial nominating commissions for the office of judge of the county court for counties located within the district court judicial districts served, except that members of the judicial nominating commissions for district judge and county judge in districts 1, 2, 3, 4, and 10 shall be appointed or selected separately to serve on such commissions.

Sec. 3. Section 24-805, Reissue Revised Statutes of Nebraska, is amended to read:

24-805 In conformity with the residency requirements of section 24-802, individual lawyer or citizen members of any judicial nominating commission may serve on more than one judicial nominating commission at the same time.

Sec. 4. Section 24-806, Reissue Revised Statutes of Nebraska, is amended to read:

24-806 (1)(a) Lawyer members and alternate lawyer members of any judicial nominating commission shall be active members of the bar of the State of Nebraska, shall reside in the judicial district or area of the state served by the commission, and shall be registered to vote. Not more than two lawyer members of each commission shall be registered members of the same political party, and not more than two alternate lawyer members shall be registered members of the same political party. Nominations for lawyer members of each commission may be solicited and received electronically via the Supreme Court's attorney licensure portal on or before October 1 of each even-numbered year.

(b) The nominations shall be listed on the ballot by the Clerk of the Supreme Court:

(i) From the legally recognized political parties or be listed as nonpartisan; and

(ii) In such a manner as will permit the final selection to be made in conformity with Article V, section 21, of the Constitution of Nebraska.

(2) If, on October 1 of an even-numbered year, solicited nominations are insufficient to provide candidates from the permissible political parties for each vacancy, the Executive Council of the Nebraska State Bar Association shall nominate additional candidates for the position so that there shall be a qualified candidate for each position. Such nominations shall be made on or before November 1 of such year.

(3) The Clerk of the Supreme Court shall mail or electronically deliver a ballot with the name of each nominee to all members of the bar of Nebraska residing in the judicial district or area designating a date at least ten days and not more than thirty days after the date of such mailing or electronic delivery by the Clerk of the Supreme Court when the ballots will be counted. The ballots shall be counted by a board consisting of the Clerk of the Supreme Court, the Secretary of State, and the Attorney General or by alternates designated by any of them to serve in his or her place. Whether conducted electronically or by mail, the Clerk of the Supreme Court shall ensure that the election is so conducted as to maintain the secrecy of the ballot and the

validity of the results. The candidate of the required political party receiving the highest number of votes shall be considered as having been elected to the commission. The candidate of the required political party receiving the next highest number of votes shall be considered as having been elected an alternate lawyer member of the commission and shall serve as a lawyer member of the commission in the event of a lawyer member vacancy of the same political party or category on the commission created either by resignation or disqualification. In the case of a resignation, an alternate lawyer member shall continue to serve as a member of the commission until the term of office of his or her predecessor expires.

(4) In any election when more than one lawyer member of a judicial nominating commission is to be elected, the nominees shall be submitted without designation of the term. Each voter shall be instructed to vote for as many nominees as there are vacancies to be filled. The candidate receiving the highest number of votes shall be considered as having been elected for the longest term. The candidate receiving the next highest number of votes shall be deemed to have been elected for next to the longest term, and if an alternate lawyer member or members are to be elected, the candidate or candidates receiving the third and fourth highest number of votes shall be deemed elected as the alternate lawyer member or members. In case of ties the determination shall be made by lot by the counting board.

Sec. 5. Section 24-808, Reissue Revised Statutes of Nebraska, is amended to read:

24-808 (1) A vacancy relating to any member or alternate citizen member of a judicial nominating commission appointed by the Governor shall be filled promptly by appointment by the Governor for the unexpired term.

(2) A vacancy of a lawyer member caused by resignation shall be filled promptly with the alternate lawyer member of the same political party for the unexpired term. If an alternate lawyer member of the same political party does not exist, then an alternate lawyer member not affiliated with any political party may fill the vacancy. If there are no alternates who meet such

requirements, the Clerk of the Supreme Court shall use the certified election results of the previous election and move up the alternate member who had the highest number of votes in the previous election who would not otherwise conflict with the requirements of Article V, section 21, of the Constitution of Nebraska, to balance political party membership.

(3) A vacancy of an alternate lawyer member for an unexpired term shall be filled promptly by the Executive Council of the Nebraska State Bar Association upon notification by the Clerk of the Supreme Court as to the required number of vacancies and the required political party affiliation or nonpartisan designation. The Executive Council shall designate sufficient lawyers to fill the vacancies who meet the requirements of subsection (1) of section 24-806.

Sec. 6. Section 24-809, Reissue Revised Statutes of Nebraska, is amended to read:

24-809 (1) The judge of the Supreme Court on each judicial nominating commission shall be the chairperson of the commission and shall preside at all of its meetings. He or she shall not be entitled to vote. In selecting or rejecting judicial nominees, the members of the commission shall vote by oral roll call vote. When it is determined that a judicial vacancy exists in a particular district, the chairperson of the commission shall determine whether there will be eight qualified members of the appropriate judicial nominating commission, including alternate members.

(2) If it is determined that there will not be eight members present and capable of voting at the time the commission meets to vote, the chairperson of the commission shall inform the Governor of the number of citizen members which need to be appointed and shall inform the Executive Director of the Nebraska State Bar Association of the number of alternate lawyer members which need to be designated. The Governor shall promptly make such number of citizen appointments as are necessary. The Executive Council of the Nebraska State Bar Association shall appoint each alternate lawyer member in the same manner as in section 24-808.

(3) Vacancies of lawyer members or alternate lawyer members caused by

disqualification or inability to serve at a particular commission meeting shall be considered temporary and shall be filled as provided in this section but service as a member or alternate member shall cease after the commission sends the names of the candidates to the Governor.

(4) There shall be eight qualified commission members present and capable of voting at the time the vote is taken. In the event that a nominating commission public hearing is postponed due to the lack of a full complement of commission members entitled to vote, the time limits specified in subsection (4) of section 24-810 shall be extended for an additional thirty days for each such postponement. The chairperson of the commission shall cause appropriate notice of the time and place of the newly scheduled judicial nominating commission public hearing to be published as provided in subsection (1) of section 24-810. The postponement of a commission hearing shall not extend the initial application filing deadline of twenty-one days prior to the initial public hearing. Each candidate shall receive five votes from the voting members of the nominating commission to have his or her name submitted to the Governor.

Sec. 7. Section 24-810, Reissue Revised Statutes of Nebraska, is amended to read:

24-810 (1)(a) When a final determination of a district, county, or separate juvenile court judicial vacancy has been made pursuant to section 24-809.04 or in the event of a judicial vacancy in any other court, the Clerk of the Supreme Court shall contact the chairperson of the judicial nominating commission relating to such vacancy and shall ascertain from him or her a time and place for the first meeting of such judicial nominating commission, at which time a public hearing will be held.

(b) The first public hearing shall be held within sixty days after final determination of the vacancy occurs. The chairperson shall notify each commission member in writing of the time and place of the meeting and shall also cause appropriate notice to be published by various news media of the time and place of the public hearing of the judicial nominating commission and of the interest of the commission in receiving applications from qualified

candidates for the judicial vacancy.

(c) Any lawyer meeting the statutory requirements to serve as a judge who is interested in being nominated and appointed to such judgeship shall signify his or her interest by filing the appropriate application with the proper entity at least twenty-one days prior to the public hearing.

(d) Any lawyer member or alternate lawyer member of the commission interested in being nominated for the judgeship that is the subject of the notice of public hearing and application deadline shall, in order to be eligible for nomination, resign as a member or alternate member of the commission before the publication of such notice.

(e) At least ten days prior to the public hearing, the chairperson shall cause to be released to the public the names of all lawyers who have applied for such judgeship. Any member of the public shall be entitled to attend the public hearing to express, either orally or in writing, his or her views concerning candidates for the judicial vacancy.

(2) After the public hearing, the judicial nominating commission shall hold such additional private or confidential meetings as it determines to be necessary. Additional information may be submitted in writing to the commission at any time prior to its selection of qualified candidates to fill the vacancy. The commission shall make such independent investigation and inquiry as it considers necessary or expedient to determine the qualifications of candidates for the judicial vacancy and shall take such action as it deems necessary or expedient to encourage qualified candidates to accept judicial office or nomination for judicial office.

(3) The judicial nominating commission may, before or after the hearing provided for in subsection (1) of this section, institute a search for additional candidates. If additional candidates are obtained, the commission shall hold further public hearings in the same manner as provided in such subsection.

(4) The names of candidates shall be submitted to the Governor within ninety days after the date a final determination has been made of a district,

county, or separate juvenile court judicial vacancy or, in the event of a judicial vacancy in any other court, after a judicial vacancy occurred if one public hearing is held and within one hundred twenty days if more than one public hearing is held.

Sec. 8. Section 24-810.01, Reissue Revised Statutes of Nebraska, is amended to read:

24-810.01 A change in residency that results in a member not satisfying the residency requirements of section 24-802 or a change in party registration shall automatically terminate the tenure of any member of a judicial nominating commission.

Sec. 9. Original sections 24-802, 24-805, 24-806, 24-808, 24-809, 24-810, and 24-810.01, Reissue Revised Statutes of Nebraska, and section 24-803, Revised Statutes Cumulative Supplement, 2024, are repealed.

PRESIDENT OF THE LEGISLATURE

*THIS IS TO CERTIFY that the within LB 388 was passed by the One Hundred Ninth
Legislature of Nebraska at its First Session on the day
of 20.....*

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR