

HOUSE BILL REPORT

HB 2150

As Reported by House Committee On:
Judiciary

Title: An act relating to the appointment of judges.

Brief Description: Providing for the appointment of judges.

Sponsors: Representatives Rodne, B. Sullivan, Appleton and Sommers.

Brief History:

Committee Activity:

Judiciary: 2/20/07, 2/26/07 [DPS].

Brief Summary of Substitute Bill

- Changes the method of selection of justices of the Supreme Court and judges of the Court of Appeals to a system of Governor appointment from a list submitted by a nominating commission, with subsequent retention elections.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Member; Ahern, Moeller and Pedersen.

Minority Report: Do not pass. Signed by 3 members: Representatives Kirby, Ross and Williams.

Staff: Edie Adams (786-7180).

Background:

The Washington Supreme Court and Court of Appeals are the state's appellate courts. The Supreme Court is the state's court of last resort. It exercises discretionary review of appeals of cases from the Court of Appeals and direct review of trial court decisions in certain circumstances, such as where the action involves a state officer, the death penalty, or an issue of broad public interest that requires a prompt and final determination. In addition, the Supreme Court has original jurisdiction in petitions against state officers. The Supreme Court

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

is the administrator for the state court system and the final rule-making body for the courts. To qualify for a position on the Supreme Court, a person must be admitted to the practice of law in Washington.

The Court of Appeals is a non-discretionary appellate court and therefore must hear all cases filed with it. All appeals of superior court decisions, except those that may be appealed directly to the Supreme Court, are heard by the Court of Appeals. There are three divisions of the Court of Appeals, headquartered in Seattle, Tacoma, and Spokane. Each of the three divisions is divided into three geographic districts, and a specific number of judges must be elected from each district. There are a total of 22 judges of the Court of Appeals: 10 judges in Division I, seven judges in Division II, and five judges in Division III. To qualify for a position on the Court of Appeals, a person must have been admitted to the practice of law in Washington for five years and, at the time of election, must have lived at least one year in the district from which the position was drawn.

Article IV, Section 3 of the Washington Constitution provides that justices of the Supreme Court are to be elected by the qualified voters of the state for a term of six years. If a vacancy occurs in a Supreme Court justice position, the Governor appoints a person to fill the vacancy until a justice is elected at the next general election to fill the vacancy for the remainder of the unexpired term.

The State Constitution provides that the manner of election and terms of office of judges of the Court of Appeals are to be provided by statute. By statute, judges of the Court of Appeals also are elected to six-year terms and a vacancy in a Court of Appeals judge position is filled in the same manner as a vacancy in a Supreme Court justice position.

Summary of Substitute Bill:

The method of selection of justices of the Supreme Court and judges of the Court of Appeals is changed to a system of Governor appointment from a list submitted by a nominating commission, with subsequent retention elections.

Judicial Nominating Commission: A Judicial Nominating Commission (Commission) is created to nominate persons for appointment to the Washington Supreme Court and the Court of Appeals. The Commission consists of the following 11 members: four lawyers appointed by the Washington State Bar Association; three non-lawyers appointed by the Governor; and four legislators, one from each caucus of the Senate and the House of Representatives.

Appointments to the Commission must be made with consideration of geographic representation and diversity, and without regard to political affiliation. Commission members serve five-year terms and are limited to two terms. The Commission must select one of its members to serve as chair and must establish the chair's term. The Commission may adopt rules and procedures governing its operation. The Commission may not take any action without a quorum (six members).

Organizational meetings of the Commission are subject to the Open Public Meetings Act, but all final deliberations of the Commission are secret and confidential. The Commission must determine the confidentiality of other proceedings by rule.

Judicial Selection: The Commission must submit to the Governor a list of at least three but no more than five qualified persons to fill any vacancy on the Supreme Court or Court of Appeals within 60 days of the vacancy. The names of the nominees must be submitted in alphabetical order and may be accompanied by a confidential memorandum stating facts concerning each nominee. The Governor must make the list of nominees public and should encourage public comment.

The Governor must appoint one of the nominees to the vacant judge position within 30 days of receiving the list of nominees. If the Governor does not make an appointment within that time, the Commission will make the appointment.

If the Commission fails to submit nominations within 60 days of a vacancy, the Governor may appoint any qualified person to fill the vacancy.

A justice or judge appointed by the Governor remains in office for a term of six years, or for the unexpired portion of the term for a vacancy that occurs mid-term. At the end of the term, the justice or judge is subject to a vote on whether he or she will be retained in office.

Retention Elections: At the completion of the term of office of a Supreme Court justice or Court of Appeals judge, the justice or judge must stand for a retention election at the next general election. The statewide ballot must include the question: "Shall [name] be retained as a [justice of the Supreme Court] [judge of the Court of Appeals] of the state of Washington for six years?" A justice or judge is retained in office if the majority of votes cast answer the ballot question in the affirmative.

In a year when the ballot includes a question regarding retention of a Supreme Court justice or Court of Appeals judge, the voter pamphlet may contain a statement, not to exceed 200 words, advocating the retention of the justice or judge.

Substitute Bill Compared to Original Bill:

The substitute bill made a number of structural, clarifying, and technical amendments. The substitute bill places the ballot question language in the election laws and specifies that a judge is retained in office if he or she receives a majority affirmative vote on the ballot question on retention.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect if the proposed constitutional amendment to Article IV of the State Constitution, providing for the appointment of judges of the Supreme Court and the Court of Appeals, is ratified at the next general election.

Staff Summary of Public Testimony:

(In support) This country started with a system of appointment of judges. In the Jacksonian Democracy era of the 1800s, states started moving to a system of electing judges, and by the beginning of the 20th century judicial elections became nonpartisan. Later in the 20th century, states began switching to a commission system. Washington would not be forging a new path. Twenty-four states currently use a commission for the appointment of their appellate judges. In our current system, most judges take their positions through appointment. Most people don't get the chance to vote on their judges because most judges have no opposition.

There are a number of reasons why the election of judges is not appropriate. A judge's job is substantially technical in nature. When a citizen puts his or her life, property, family, or business in the hands of an individual judge, we should provide that person with the highest skill level possible. Elections aren't the way to find the highest skilled judges. The commission system will help with ensuring the highest skilled judges because it will take a hard look at candidates' qualifications through hearings and testimony.

When the citizens vote in an election, they feel that the person they are voting for represents them. That is not the case with judges. Judges do not represent the people. Campaigns become troubling when you start talking about how a judge feels about a particular issue. In addition, money issues are especially corrosive in judicial elections. Parties appearing before the court are entitled to impartiality and the appearance of impartiality from the judge. Money from special interests damages that appearance of impartiality.

Washington has a good system for selecting judges, but it could have a better system. Merit selection would aid in improving our system because it would downplay the partisan politics and special interests that currently play a part in our system. The court system shouldn't be a playground for special interests. There is no way to completely rid judicial selection of politics. However, the commission system achieves the best possible system by establishing checks and balances and transparency.

The bill should specifically state that a judge is retained in office if he or she gets a majority vote in the retention election.

(Opposed) There are over 400 judges serving in four court levels in Washington, and there are differing views among those judges about this proposal. However, the courts try to speak with one voice on policy matters through the Board for Judicial Administration (BJA), which provides the leadership for the courts. The BJA voted unanimously to oppose this legislation, which is basically an incumbent retention plan, because the bill does not serve the public interest. Since 2001, the BJA has had a consistent position of election of judges from top to bottom.

The primary theme behind the opposition to this proposal is the fact that it will diminish judicial accountability to the public. The drafters of our State Constitution wanted judges to be accountable to the people and the Governor to be accountable to the people in making appointments to fill vacancies.

A commission system isn't accountable to anyone. Judges appointed under the commission system wouldn't even have to be confirmed by the Senate. The Commission itself would be faceless to the public. Retention elections aren't much of an election, don't really provide accountability, and won't attract the attention of the public. Judges would rather confront the politics out front and in the open instead of behind the closed doors of a commission.

The concern about money issues and other problems with the current system can be addressed by other means, such as improving campaign finance laws and improving the voter pamphlet information for judges, rather than throwing the current system out.

Persons Testifying: (In support) Representative Rodne, prime sponsor; Charlie Wiggins, American Judicature Society; Judge William Baker, Washington Court of Appeals; and William Andersen, University of Washington Law School.

(Opposed) Chief Justice Gerry Alexander and Vickie Churchill, Board for Judicial Administration.

Persons Signed In To Testify But Not Testifying: None.