WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

ENROLLED

House Bill No. 4036
(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

Passed March 13, 2010
In Effect Ninety Days From Passage
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-10-3a, relating to the establishment of the Judicial Vacancy Advisory Commission; providing for commission membership and terms of appointment; requiring written policies and procedures of the commission; establishing a quorum requirement; requiring that certain proceedings of the commission be open to the public; requiring the disclosure of certain documents or materials; exempting certain meetings from the Open Governmental Proceedings Act; and exempting certain documents and materials from the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §3-10-3a, to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-3a. Judicial Vacancy Advisory Commission.
(a) The Judicial Vacancy Advisory Commission is hereby established to assist the Governor in filling judicial vacancies. The commission shall meet and submit a list of no more than five nor less than two best qualified persons to the Governor within ninety days of the occurrence of a vacancy in the office of justice of the Supreme Court of Appeals, judge of an intermediate appellate court, judge of a circuit court, or judge of a family court.

(b) The commission shall consist of eight appointed members. Four public members shall be appointed by the Governor for six-year terms, except for the initial appointments which shall be staggered in accordance with subsection (c) of this section. Four attorney members shall be appointed by the Governor for six-year terms, except as provided in subsection (c) of this section, from a list of nominees provided by the Board of Governors of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall nominate no more than twenty nor less than ten best qualified attorneys for appointment to the commission whenever there is a vacancy in the membership of the commission reserved for attorney members. The commission shall choose one of its appointed members to serve as chair for a three-year term. No more than four appointed members of the commission shall belong to the same political party. No more than three appointed members of the commission shall be residents of the same congressional district. All members of the commission shall be citizens of this state. Public members of the commission may not be licensed to practice law in West Virginia or any other jurisdiction.

(c) Of the initial appointments made to the commission, two public members and two attorney members shall be appointed for a term ending two years after the effective date of this act, one public member and one attorney member
shall be appointed for a term ending four years after the effective date of this section, and one public member and one attorney member shall be appointed for a term ending six years after the effective date of this section.

(d) The Governor, or his or her designee, the President of the West Virginia State Bar, and the Dean of the West Virginia University College of Law shall serve as *ex officio* members of the commission.

(e) Members of the commission shall serve without compensation, except that commission members are entitled to reimbursement of travel and other necessary expenses actually incurred while engaged in official commission activities in accordance with the guidelines of the Travel Management Office of the Department of Administration, or its successor entity. The Governor's Office shall cooperate with the commission to ensure that all resources necessary to carrying out the official duties of the commission are provided, including staff assistance, equipment and materials.

(f) The commission shall adopt written policies that formalize and standardize all operating procedures and ethical practices of its members including, but not limited to, procedures for training commission members, publishing notice of judicial vacancies, recruiting qualified individuals for consideration by the commission, receiving applications from qualified individuals, notifying the public of judicial vacancies, notifying state or local groups and organizations of judicial vacancies, and soliciting public comment on judicial vacancies. The written policies of the commission are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the Secretary of State.

(g) A majority of the commission plus one shall constitute a quorum to do business.
(h) All organizational meetings of the commission shall be open to the public and subject to the requirements of article nine-a, chapter six of this code. An “organizational meeting” means an initial meeting to discuss the commission’s procedures and requirements for a judicial vacancy. The commission shall hold at least one organizational meeting upon the occurrence of a judicial vacancy. All other meetings of the commission are exempt from article nine-a, chapter six of this code.

(i) The commission shall make available to the public copies of any applications and any letters of recommendation written on behalf of any applicants. All other documents or materials created or received by the commission shall be confidential and exempt from the provisions of chapter twenty-nine-b of this code, except for the list of best qualified persons or accompanying memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this section, which shall be available for public inspection, and the written policies required to be filed with the Secretary of State in accordance with subsection (f) of this section.

(j) The commission shall submit its list of best qualified persons to the Governor in alphabetical order. A memorandum may accompany the list of best qualified persons and state facts concerning each of the persons listed. The commission shall make copies of any list of best qualified persons and accompanying memoranda it submits to the Governor available for public inspection.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within was approved this the 31st day of May, 2010.

Governor