

HB 4036

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WEST VIRGINIA LEGISLATURE

**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

**ENROLLED**

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**H. B. 4036**

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SECRETARY OF STATE

(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.**

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

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

31 (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. In addition, one public member and one attorney member

35 shall be appointed for a term ending four years after the  
36 effective date of this section, and one public member and one  
37 attorney member shall be appointed for a term ending six  
38 years after the effective date of this section.

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

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

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

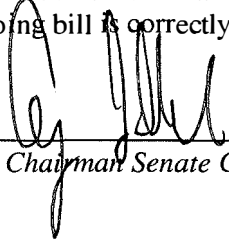
65 (g) A majority of the commission plus one shall  
66 constitute a quorum to do business.

67 (h) All organizational meetings of the commission shall  
68 be open to the public and subject to the requirements of  
69 article nine-a, chapter six of this code. An “organizational  
70 meeting” means an initial meeting to discuss the  
71 commission’s procedures and requirements for a judicial  
72 vacancy. The commission shall hold at least one  
73 organizational meeting upon the occurrence of a judicial  
74 vacancy. All other meetings of the commission are exempt  
75 from article nine-a, chapter six of this code.

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

87 (j) The commission shall submit its list of best qualified  
88 persons to the Governor in alphabetical order. A  
89 memorandum may accompany the list of best qualified  
90 persons and state facts concerning each of the persons listed.  
91 The commission shall make copies of any list of best  
92 qualified persons and accompanying memoranda it submits  
93 to the Governor available for public inspection.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



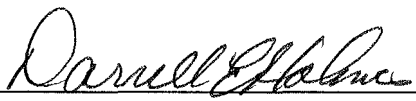
Chairman Senate Committee



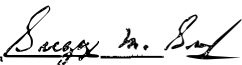
Chairman House Committee

Originating in the House.

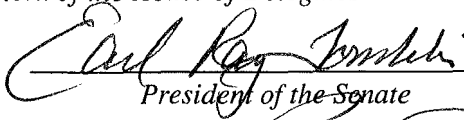
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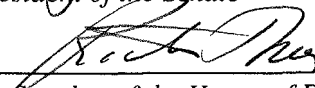
Clerk of the Senate



Clerk of the House of Delegates

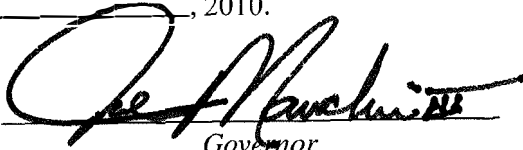


President of the Senate



Speaker of the House of Delegates

The within is approved this the 31<sup>st</sup> day of March, 2010.



Governor

PRESENTED TO THE  
GOVERNOR

MAR 30 2010

Time 10:30am