

PROPOSED AMENDMENT

DIGEST

Proposed amendment to HB 1419.

- 1 Delete the title and insert the following:
2 A BILL FOR AN ACT to amend the Indiana Code concerning courts.
3 Delete everything after the enacting clause and insert the following:
4 SECTION 1. IC 33-24-2-5, AS AMENDED BY P.L.58-2005,
5 SECTION 29, IS AMENDED TO READ AS FOLLOWS
6 [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The question of approval
7 or rejection of a justice shall be placed on the general election ballot in
8 the form prescribed by IC 3-11 and must state "Shall Justice (insert
9 name (as permitted under IC 3-5-7) here) be retained in office?".
10 **(b) If the judicial nominating commission makes a**
11 **recommendation concerning the approval or rejection of a justice**
12 **under IC 33-37-3-2.5 or the judge of the tax court under**
13 **IC 33-26-2-3, the recommendation shall be placed on the general**
14 **election ballot immediately following the question described in**
15 **subsection (a) and must state "The Indiana judicial nominating**
16 **commission has recommended that the retention of (Justice or**
17 **Judge) (insert name (as permitted under IC 3-5-7) here) be**
18 **approved (be rejected)."**
19 SECTION 2. IC 33-25-2-5, AS AMENDED BY P.L.58-2005,
20 SECTION 30, IS AMENDED TO READ AS FOLLOWS
21 [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The question of approval
22 or rejection of a judge shall be placed on the general election ballot in
23 the form prescribed by IC 3-11 and must state "Shall Judge (insert name
24 (as permitted under IC 3-5-7) here) be retained in office?".
25 **(b) If the judicial nominating commission makes a**
26 **recommendation concerning the approval or rejection of a judge**

1 **under IC 33-37-3-2.5, the recommendation shall be placed on the**
2 **general election ballot immediately following the question**
3 **described in subsection (a) and must state "The Indiana judicial**
4 **nominating commission has recommended that the retention of**
5 **Judge (insert name (as permitted under IC 3-5-7) here) be**
6 **approved (be rejected)."**

7 SECTION 3. IC 33-27-2-2 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) For purposes
9 of electing attorney members to the judicial nominating commission, the
10 state shall be divided into three (3) districts, corresponding to the First
11 District, the Second District, and the Third District of the court of
12 appeals.

13 (b) The qualified electors consist of the individuals who are registered
14 with the clerk of the supreme court as attorneys in good standing under
15 the requirements of the supreme court.

16 (c) The electors of each district shall elect one (1) resident of their
17 district who is admitted to the practice of law in Indiana **and who has**
18 **been nominated under section 3 of this chapter** to the judicial
19 nominating commission. The term of office of each elected member is
20 three (3) years, beginning on the first day of January following the
21 election. During the month before the expiration of an elected member's
22 term of office, an election shall be held to fill the succeeding three (3)
23 year term of office. Attorney commissioners on the commission must
24 reside for the term of their office in the district from which they were
25 elected. An attorney commissioner is considered to have resigned the
26 position if the residency of the attorney commissioner changes from the
27 court of appeals district for which the attorney commissioner was
28 elected.

29 (d) Except when a term of office has less than ninety (90) days
30 remaining, vacancies in the office of an attorney commissioner to the
31 judicial nominating commission shall be filled for the unexpired term
32 of the member creating the vacancy by a special election **conducted in**
33 **accordance with section 3 of this chapter in the district from which**
34 **the attorney commissioner was elected.** An attorney commissioner
35 who is elected to fill an unexpired term shall commence the attorney
36 commissioner's duties immediately upon the certification of the new
37 attorney commissioner's election to the secretary of state.

1 SECTION 4. IC 33-27-2-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. The attorney
3 commissioners of the judicial nominating commission shall be elected
4 by the following process:

5 (1) The clerk of the supreme court shall, at least ninety (90) days
6 before the date of an election, send a notice by mail to the address
7 for each qualified elector shown on the records of the clerk **speaker**
8 **of the house of representatives and the president pro tempore**
9 **of the senate** informing the ~~electors~~ **speaker of the house of**
10 **representatives and the president pro tempore of the senate**
11 that nominations for the election must be made to the clerk of the
12 supreme court at least sixty (60) days before the election.

13 (2) ~~A nomination in writing accompanied by a signed petition of~~
14 ~~thirty (30) electors from the nominee's district, and the written~~
15 ~~consent of the nominee shall be filed; by mail or otherwise; by any~~
16 ~~electors or group of electors admitted to the practice of law in~~
17 ~~Indiana who reside in the same district as the nominee; in the office~~
18 ~~of the clerk of the supreme court at least sixty (60) days before the~~
19 ~~election. At least sixty (60) days before the election, the speaker~~
20 ~~of the house of representatives shall nominate one (1) person~~
21 ~~admitted to practice law in Indiana from each court of appeals~~
22 ~~district to stand for election to the judicial nominating~~
23 ~~commission. Not more than two (2) persons nominated by the~~
24 ~~speaker of the house of representatives may be members of the~~
25 ~~same political party.~~

26 (3) **At least sixty (60) days before the election, the president**
27 **pro tempore of the senate shall nominate one (1) person**
28 **admitted to practice law in Indiana from each court of appeals**
29 **district to stand for election to the judicial nominating**
30 **commission. Not more than two (2) persons nominated by the**
31 **president pro tempore of the senate may be members of the**
32 **same political party.**

33 ~~(3) (4) The clerk of the supreme court shall prepare and print~~
34 ~~separate ballots for each court of appeals district. These ballots~~
35 ~~must contain the names and residence addresses of all the nominees~~
36 ~~residing within the district for which the ballots are prepared; and~~
37 ~~whose written nominations, petitions, and written statements of~~

1 consent have been received sixty ~~(60)~~ days before the election: who
 2 **have been nominated by the speaker of the house of**
 3 **representatives or the president pro tempore of the senate.**

4 ~~(4)~~ **(5)** The ballot must read as follows:

5 Indiana Judicial Nominating Commission

6 BALLOT FOR DISTRICT ()

7 To be cast by individuals residing in District () and registered with the
 8 Clerk of the Supreme Court as an attorney in good standing under the
 9 requirements of the Supreme Court. Vote for one (1) member listed
 10 below for Indiana Judicial Nominating Commissioner for the term
 11 commencing _____.

12 District ()

13 (Name) (Address)

14 (Name) (Address)

15 (Name) (Address)

16 To be counted, this ballot must be completed, the accompanying
 17 certificate completed and signed, and both together mailed or delivered
 18 to the Clerk of the Supreme Court of Indiana, Indianapolis, Indiana, not
 19 later than _____.

20 DESTROY BALLOT IF NOT USED

21 ~~(5)~~ **(6)** In each district, the nominee receiving the most votes from
 22 the district shall be elected.

23 ~~(6)~~ **(7)** The clerk shall also supply with each ballot distributed a
 24 certificate, to be completed and signed and returned by the elector
 25 voting the ballot, certifying that the voter is registered with the clerk
 26 of the supreme court as an attorney in good standing under the
 27 requirements of the supreme court, and that the voter voted the
 28 ballot returned. A ballot not accompanied by the signed certificate
 29 of the voter shall not be counted.

30 ~~(7)~~ **(8)** To maintain the secrecy of each vote, a separate envelope
 31 shall be provided by the clerk for the ballot, in which only the voted
 32 ballot may be placed. This envelope shall not be opened until the
 33 counting of the ballots.

34 ~~(8)~~ **(9)** The clerk of the supreme court shall mail a ballot and the
 35 accompanying material to all electors at least two (2) weeks before
 36 the date of the election.

37 ~~(9)~~ **(10)** The ballot and the accompanying certificate must be

1 received by the clerk of the supreme court by 4 p.m. on the last day
2 of the election period.

3 ~~(10)~~ **(11)** Upon receiving the completed ballots and the
4 accompanying certificate the clerk of the supreme court shall insure
5 that the certificates have been completed in compliance with this
6 article. All ballots that are accompanied by a valid certificate shall
7 be placed in a package designated to contain ballots. All
8 accompanying certificates shall be placed in a separate package.

9 ~~(11)~~ **(12)** The clerk of the supreme court, with the assistance of the
10 secretary of state and the attorney general, shall open and canvass
11 all ballots after 4 p.m. on the last day of the election period in the
12 office of the clerk of the supreme court. A ballot received after 4
13 p.m. may not be counted unless the chief justice orders an extension
14 of time because of unusual circumstances. Upon canvassing the
15 ballots, the clerk of the supreme court shall place all ballots back in
16 their packages. These, along with the certificates, shall be retained
17 in the clerk's office for six (6) months, and the clerk may not permit
18 anyone to inspect them except upon an order of the supreme court.

19 ~~(12)~~ **(13)** Not later than ten (10) days after the election, the clerk
20 shall certify the results to the secretary of state.

21 ~~(13)~~ **(14)** In an election held for selection of attorney
22 commissioners of the judicial nominating commission, if **the** two
23 ~~(2) or more~~ nominees are tied, the canvassers shall resolve the tie
24 by lot in a manner that they shall determine, and the winner of the
25 lot is considered elected.

26 SECTION 5. IC 33-27-2-9 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. The
28 commissioners, employees, and staff of the judicial nominating
29 commission are immune from civil liability for any act or proceeding
30 taken, or communication or statement made, relevant to the evaluation
31 of a candidate under IC 33-27-3-2 **or the retention of a judge or**
32 **justice under IC 33-37-3-2.5.**

33 SECTION 6. IC 33-37-3-2.5 IS ADDED TO THE INDIANA CODE
34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
35 UPON PASSAGE]: **Sec. 2.5. (a) If a justice or judge has filed a**
36 **statement with the secretary of state under IC 33-24-2-2 or**
37 **IC 33-25-2-2 that the justice or judge wishes to be retained in**

1 office, the judicial nominating commission may recommend that the
2 judge or justice be:

3 (1) approved; or

4 (2) rejected.

5 A recommendation under this section must be filed with the
6 secretary of state not later than noon on August 1. The affirmative
7 votes of at least four (4) members of the judicial nominating
8 commission are required to make a recommendation under this
9 section. The judicial nominating commission is not required to
10 make a recommendation.

11 (b) If the judicial nominating commission makes a
12 recommendation under this section, the recommendation shall be
13 placed on the ballot in accordance with IC 33-24-2-5 or
14 IC 33-25-2-5.

15 SECTION 7. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding
16 IC 33-27-2-1 and IC 33-27-2-2, the term of office of each elected or
17 appointed member of the judicial nominating commission expires
18 on June 30, 2006.

19 (b) Not later than March 30, 2006, the clerk of the supreme court
20 shall begin proceedings to conduct a special election under
21 IC 33-27-2-3 to replace the elected members of the judicial
22 nominating commission whose term of office expires in accordance
23 with subsection (a).

24 (c) Not later than May 31, 2006, the governor shall appoint three
25 (3) new members of the judicial nominating commission in
26 accordance with IC 33-27-2-1 to replace the appointed members
27 of the judicial nominating commission whose term of office expires
28 in accordance with subsection (a).

29 SECTION 8. An emergency is declared for this act.

(Reference is to HB 1419 as introduced.)