

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1584

H. P. 1311

House of Representatives, April 12, 1977

On Motion of Mr. Bennett of Caribou referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Carter of Winslow.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Establish a Commission on Judicial Tenure and Disabilities.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 4 MRSA § 2, as amended by PL 1975, c. 771, § 16, is repealed.

Sec. 2. 4 MRSA § 5, 3rd ¶, is repealed and the following enacted in its place:

Any Justice of the Supreme Judicial Court who prior to his retirement age is unable, by reason of a mental condition or physical condition, or both, that is or is likely to become permanent, to perform his duties as such justice shall, upon recommendation of the Commission on Judicial Tenure and Disabilities and order of the Supreme Judicial Court approved by a majority of the Justices of the Supreme Judicial Court, be retired prior to his retirement age and when so retired he shall receive the same benefits as he would have received had he retired at full retirement age, and such retirement shall terminate his service.

Sec. 3. 4 MRSA § 103, 3rd ¶, is repealed and the following enacted in its place:

Any Justice of the Superior Court who prior to his retirement age is unable, by reason of a mental condition or physical condition, or both, that is or is likely to become permanent, to perform his duties as such justice shall, upon recommendation of the Commission on Judicial Tenure and Disabilities and order of the Superior Court approved by a majority of the Justices of the Superior Court, be retired prior to his retirement age and when so retired he shall receive the same benefits as he would have received had he

retired at full retirement age, and such retirement shall terminate his services.

Sec. 4. 4 MRSA § 157-A, 3rd ¶, as enacted by PL 1973, c. 417, § 2, is repealed and the following enacted in its place:

Any Judge of the District Court who prior to his retirement age is unable, by reason of a mental condition or physical condition, or both, that is or is likely to become permanent, to perform his duties as such judge shall, upon recommendation of the Commission on Judicial Tenure and Disabilities and order of the District Court approved by a majority of the Judges of the District Court, be retired prior to his retirement age and when so retired he shall receive the same benefits as he would have received had he retired at full retirement age, and such retirement shall terminate his services.

Sec. 5. 4 MRSA c. 25 is enacted to read:

CHAPTER 25

JUDICIAL TENURE AND DISABILITIES

§ 1101. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. Commission. "Commission" means the Commission on Judicial Tenure and Disabilities.

2. Judicial officer. "Judicial officer" means any Chief Justice of the Supreme Judicial Court, Justice of the Supreme Judicial Court, Justice of the Superior Court or Judge of the District Court.

§ 1102. Establishment and composition

There is established a Commission on Judicial Tenure and Disabilities to advise on the competence and the mental, physical and moral fitness of judicial officers to continue in office, to be composed of 5 persons of recognized judgment, integrity and objectivity who shall be appointed by the Governor subject to review by the Joint Standing Committee on Judiciary and confirmation by the Legislature, to serve for terms of 5 years; except that members first appointed shall serve for terms of 5 years, 4 years, 3 years, 2 years and one year, respectively, as designated by the Governor. All members of the commission shall be citizens of the State and at least 3 members shall be attorneys admitted to practice within the State. The Governor shall designate one of the members who is also an attorney as chairman, to serve at the pleasure of the Governor. Upon expiration of their terms, commission members shall continue to serve until their successors are appointed and qualified.

§ 1103. Restrictions on membership

No member of the commission shall hold any official position in a political party or organization while serving on the commission and shall not be eligible for reappointment to succeed himself on the commission.

No member of the commission shall be eligible for appointment to judicial office so long as he is a member of the commission and for a period of 3 years thereafter.

§ 1104. Judicial qualifications

The commission shall insure the highest standards of judicial competence by exercising the following duties:

1. Complaints.

A. The commission shall review and investigate complaints from any source in regard to the competence and the physical, mental or moral fitness of a judicial officer to continue in office. The judicial officer who is subject to the complaint shall be promptly advised upon receipt of the complaint. The commission may promptly dismiss any complaint as frivolous or take such other action as it deems appropriate.

B. The commission shall undertake an investigation of any complaints when it deems appropriate. When it decides to proceed with an investigation, the commission shall promptly notify the judicial officer of its decision to investigate. When the commission holds a hearing as part of an investigation, that hearing shall be private unless a public hearing is requested by the judicial officer under investigation. A judicial officer appearing before such hearing shall be entitled to counsel and shall have the right to cross-examine witnesses.

C. The commission is authorized to administer oaths and affirmations, to issue process, compel the attendance of witnesses and the production of evidence and to conduct hearings. All complaints, proceedings, testimony and evidence presented before the commission shall be confidential and privileged, except where ordered by the commission.

D. If the commission determines that action to terminate a judicial officer's service on the bench is appropriate, the commission shall undertake the following action:

(1) Recommend to the appropriate court that the judicial officer be retired from office, if the commission has found that the judicial officer is physically or mentally unable to perform the duties of his office and that such mental or physical disability is or is likely to become of a permanent nature.

(2) Recommend to the Governor and the Joint Standing Committee on Judiciary that the judicial officer under investigation be reprimanded, censured or removed from office if the commission has found that such judicial officer has engaged in willful misconduct in office, persistent failure to perform his duties, habitual use of alcohol or drugs which interferes with the performance of his judicial duties or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The commission shall certify its findings to the appropriate office or body within 30 days after such determination.

2. Reappointment review. Prior to the expiration of the term of any judicial officer who is not required by statute to retire or who has not announced an intention to retire, the commission shall review the qualifications and competence of such judicial officer and make a recommendation to the Governor as to whether, in the view of the commission, the judicial officer is qualified or not qualified for reappointment to another term. The commission shall conduct such investigation in connection with preparation of the recommendation as it deems appropriate.

§ 1105. Confidentiality

All proceedings of the commission, including the names of candidates or judges considered or reviewed by the commission and not submitted or reported to the Governor, Legislature or appropriate judicial body and information about any candidate or judge, shall be confidential.

§ 1106. Compensation

Members of the commission shall receive compensation at the rate of \$75 per day for each day of commission business and shall receive their necessary administrative and traveling expenses incurred while actually engaged in the discharge of their official duties. The compensation and expenses of the commission members shall be paid from the appropriations to the Supreme Judicial Court. Claims for expenses must be submitted by proper vouchers approved by the Chief Justice of the Supreme Judicial Court.

Sec. 6. Effective date. This Act shall take effect on January 1, 1978.

STATEMENT OF FACT

The purpose of this bill is to establish a Commission on Judicial Tenure and Disabilities.