

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

---

---

ONE HUNDRED AND EIGHTH LEGISLATURE

---

---

Legislative Document

No. 1680

H. P. 1370

House of Representatives, April 13, 1977

On motion of Mr. Hobbins of Saco, referred to Committee on Judiciary.  
Sent up for concurrence and 1,800 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Tarbell of Bangor.

---

---

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

---

---

**AN ACT to Establish a Judicial Qualifications Commission.**

---

---

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Sec. 1. 4 MRSA § 2, as amended by PL 1975, c. 771, § 16, is repealed.

Sec. 2. 4 MRSA § 5, 3rd ¶, is repealed and the following enacted in its place: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 or physical condition, or is likely to become permanently unable to perform his duties as such justice, shall, upon recommendation of the Judicial Qualifications Commission 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 § 17, sub-§ 13-A is enacted to read:

13-A. Notify Judicial Qualifications Commission. Notify Judicial Qualifications Commission of any announced retirement or resignation, removal, expiration of term or any other vacancy in judicial office, as defined in section 422, subsection 4.

Sec. 4. 4 MRSA § 103, 3rd ¶, is repealed and the following enacted in its place: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 or physical condition, or is likely to become permanently

unable to perform his duties as such justice, shall, upon recommendation of the Judicial Qualifications Commission 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 service.

Sec. 5. 4 MRSA § 157-A, 3rd ¶, 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 or physical condition, or is likely to become permanently unable to perform his duties as such judge, shall, upon recommendation of the Judicial Qualifications Commission 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 service.

Sec. 6. 4 MRSA c. 8 is enacted to read:

## CHAPTER 8

### JUDICIAL QUALIFICATIONS COMMISSION

#### § 421. Purpose

The purpose of this chapter is to further enhance the integrity and independence of the judiciary by providing for the merit selection of candidates for nomination and appointment by the Governor to the highest judicial offices of this State, and facilitating the systematic and orderly discipline of judicial officers found to be physically, mentally or morally unfit for the further performance of judicial duties.

#### § 422. Definitions

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

1. Candidate. "Candidate" means a citizen who meets the constitutional and statutory requirements for nomination and appointment to judicial office, and who has engaged in the practice of law in the State.
2. Commission. "Commission" means the Judicial Qualifications Commission.
3. Judge. "Judge" means a duly appointed and confirmed holder of judicial office.
4. Judicial office. "Judicial office" means the appointed office of Chief Justice of the Supreme Judicial Court, Justice of the Supreme Judicial Court, Justice of the Superior Court and Judge of the District Court.
5. Member of the state bar. "Member of the state bar" means a citizen of the State of Maine who has been admitted to the practice of law in the State.

**§ 423. Establishment and composition**

There is established a Judicial Qualifications Commission to recommend candidates for nomination and appointment to judicial office, and to oversee the mental, physical and moral fitness of judicial officeholders to continue in office, to be composed as follows:

1. **Membership.** Four members of the state bar, none of whom shall be a justice or a judge, active or retired, no more than 2 of whom shall be of the same political party, who shall have practiced law in this State for at least 5 years, and 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 4 years; except that members first appointed shall serve for terms of 4 years, 3 years, 2 years and one year, respectively. The Governor shall designate one of the 4 members who is also a member of the state bar as chairman, to serve at the pleasure of the Governor; and

2. **Citizen membership.** Three citizens, none of whom shall be or shall have been members of the state bar, no 2 of whom shall be of the same political party, 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 3 years; except that members first appointed shall serve for terms of 3 years, 2 years and one year, respectively.

All appointments shall be made between January 1st and February 1st of each year, except to fill a vacancy. Members shall serve until their successors are appointed.

**§ 424. 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.

**§ 425. Candidate selection**

The commission shall select candidates for nomination and appointment by the Governor to judicial office, by exercising the following duties.

1. **Annual meeting.** Prior to March 1st of every year, the commission shall meet to adopt bylaws and amendments to bylaws governing the operation and procedures of the commission. Such bylaws shall include, but not be limited to, rules, respecting the following subjects:

- A. Calling of meetings;
- B. Method of balloting;
- C. Procedures for recruiting, screening and evaluating candidates;
- D. Criteria for evaluating candidates; and

E. Conflicts of interest of commission members.

2. Interim meetings.

A. At least 90 days prior to the expiration of the term of a judicial officer, or the retirement of a judicial officer, the commission shall meet to consider candidates eligible for appointment to the judicial office about to be vacated. At least 30 days prior to the date of expiration or retirement, the commission shall submit to the Governor the names of the 3 most qualified candidates for nomination to fill the vacancy in judicial office, and a written evaluation of each named candidate's qualifications.

B. Not later than 10 days after a vacancy occurs in a judicial office, by reason of death, incapacity, removal, sudden resignation or otherwise, the commission shall meet to consider candidates eligible for appointment to the vacated judicial office. Not later than 30 days after such meeting, the commission shall submit to the Governor the names of the 3 most qualified candidates for nomination to fill the vacancy in judicial office, and a written evaluation of each named candidate's qualifications.

C. Upon receiving written permission from a candidate for judicial office, the commission may undertake an investigation, solicit an independent investigation from any authorized government official or agency, and conduct a personal interview of a candidate for judicial office for the limited purpose of determining the qualifications of the candidate for judicial office.

D. No candidate's name shall be submitted to the Governor unless such candidate shall have been personally interviewed by the commission and approved by at least 4 members of the commission. In all proceedings of the commission, the commission shall not consider a candidate's affiliation with any political party in evaluating such candidate's qualifications for judicial office.

3. Notice of vacancy and recruiting. At least 120 days prior to the expiration of a term, or retirement of a judicial officer, or, not later than 30 days after a vacancy occurs in a judicial office by reason of death, incapacity, removal, sudden resignation or otherwise, the commission shall publish notice of the vacancy or impending vacancy in newspapers and appropriate periodicals.

The commission, or any of its members, shall actively solicit and recruit members of the bar who wish to be considered by the commission as candidates for judicial office.

§ 426. Judicial discipline

The commission shall insure the highest standards of judicial behavior, by exercising the following duties.

1. Complaints. The commission shall initiate, receive and investigate any complaint from any source in regard to the physical, mental or moral fitness of a judge to continue in office. Within 60 days after receiving a complaint, the commission shall conduct a preliminary investigation to determine the

possible merits of the complaint. If the commission finds that a complaint is frivolous, it shall so inform the complainant and take no further action upon the complaint.

2. Notice and hearing. The commission shall undertake a full investigation of all complaints, which are found not to be frivolous, and notify, in writing, the judge under investigation of the complaint pending against him. Within 10 days of the receipt of such notice, the judge under investigation may demand a hearing before the commission. The hearing shall be private unless a public hearing is requested by the judge under investigation. A judge appearing before such hearing shall be entitled to counsel and have the right to cross-examine witnesses.

3. Investigative powers. In any of its investigative proceedings, the commission is authorized to administer oaths and affirmations; to issue process and compel the attendance of witnesses and the production of evidence; and to conduct hearings. All proceedings, testimony and evidence presented before the commission shall be confidential and privileged.

4. Disposition. If, after a hearing, the commission finds that the complaint is meritorious, the commission shall undertake the following action:

A. Recommend to the appropriate court that the judge under investigation be retired from office, if the commission has found, in reliance upon the expert opinion of at least two disinterested medical practitioners, that such judge is physically or mentally unable to perform the duties of his office satisfactorily and efficiently, and that such mental or physical disability is or is likely to become of a permanent nature; and

B. Recommend to the Governor and Joint Standing Committee on Judiciary, that the judge under investigation be reprimanded, censured or removed from office, if the commission has found that such judge is guilty of 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.

#### § 427. 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.

#### § 428. Compensation

Members of the commission shall receive no salary or other compensation as such, but shall receive their necessary administrative and traveling expenses incurred while actually engaged in the discharge of their official duties. The expenses of the commission members shall be paid from the appropriations to the Supreme Judicial Court. Claims for expenses shall be submitted

by proper vouchers approved by the Chief Justice of the Supreme Judicial Court.

§ 429. Application

This chapter shall become effective on January 1, 1978.

STATEMENT OF FACT

The intent of this bill is reflected in Title 4, section 421, entitled "purpose."