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February 3, 2005

Senator Adam Kline, Chair
Senate Judiciary Committee
P.O. Box 40437
Olympia, WA 98504

Dear Senator Kline:

The Board of Trustees of the King County Bar Association supports Senate Bill 5015, which would establish a nominating commission that would provide nominees to the Governor for appointment to mid-term vacancies on the Court of Appeals and the Supreme Court.

In 1996, the Washington Supreme Court's Walsh Commission recommended that there should be "volunteer citizen nominating commissions ... to review and compile a list of recommended candidates from which the appointing authority shall fill all judicial openings." The Commission's recommendation was based on an in-depth review of the many states that have used citizen nominating commissions successfully for many years. The KCBA Board supports this concept and is pleased that SB 5015 would give citizens an opportunity for meaningful participation in filling mid-term vacancies on Washington's appellate courts.

The KCBA Board also supports SJR 8200 provided that it is amended to assure that statutes regarding mid-term appellate court vacancies will establish a "nominating commission" comprising members who are nonpartisan, who are diverse ethnically and geographically, and who are primarily non-attorneys.

Thank you for your consideration of this most important measure.

Very truly yours

John M. Cary
President

Enclosures:
Proposed Amended SB 5015 and
Proposed Amended SJR 8200

cc. Members of the Senate Judiciary Committee

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Proposed Amendments to SB 5015

Revised Draft: 1/19/05

Sec. 1. RCW 2.04.100 and 1971 c 81 s 3 are each amended to read as

follows:

If a vacancy occurs in the office of a justice of the supreme court, the governor shall appoint ((a)) one of the ~~three persons~~ nominated by the supreme court nonpartisan judicial commission under section 2 of this act to hold the office until the election and qualification of a justice to fill the vacancy, which election shall take place at the next succeeding general election, and the justice so elected shall hold the office for the remainder of the unexpired term. If the governor fails to appoint any of the nominees within sixty days after the list of nominees is submitted, the supreme court nonpartisan judicial commission shall appoint one of the nominees to fill the vacancy.

COMMENT: Identical to section 1 of SB 5015, except for two changes: specify the supreme Court Nonpartisan Commission for Supreme Court positions; changes the number of nominees to allow the Commission to submit more than three names. The single underline and single strikeout appear in SB 5015, the double underline and strikeout are changes from SB 5015.

NEW SECTION. **Sec. 2.** A new section is added to chapter 2.04 RCW 18 to read as follows:

COMMENT: The changes to this section 2 are substantial and this is a substitution for section 2 of SB 5015; the entire section is double underlined.

(1) There are hereby established a supreme court nonpartisan commission and three court of appeals nonpartisan commissions, one for each division of the court of appeals. The duties of the commissions are:

(a) in the event of a vacancy on the respective courts for which each commission is responsible, to nominate and submit to the governor three or more names of people qualified to fill the vacancy;

(b) prior to a primary and general election for any position on the court for which each commission is responsible, to review the candidates who have filed for election and recommend one or more candidates for election by the public.

COMMENT: This section departs from SB 5015 in two main ways: separate nominating commissions are established for each division of the Court of Appeals; and, an additional duty is added for the Commissions, evaluating candidates for election and recommending one or more candidates for election.

(2) The supreme court nonpartisan commission consists of nine lay members and six lawyer members: one lay member shall be selected from each of the court of appeals nonpartisan commissions by the membership of the respective commissions; four lay members shall be selected by the legislature on a nonpartisan basis; two lay members shall be selected by the governor on a nonpartisan basis; one lawyer member shall be selected

from each of the court of appeals nonpartisan commissions by the membership of the respective commissions; and three lawyer members shall be selected on a nonpartisan basis by the Washington State Bar Association. The make-up of the nonpartisan commission shall, to the extent feasible, reflect the ethnic and geographic diversity of the population of the state.

COMMENT: This proposed new section departs from SB 5015 by changing the membership of the Commission to track the recommendation of the Walsh Commission for a majority of lay persons on the Commission, changing the manner of selection of the members, and adding the requirement of consideration of diversity in making appointments..

(3) Each court of appeals nonpartisan commission consists of seven lay members and four lawyer members: four lay members shall be selected by the legislature on a nonpartisan basis; two lay members shall be selected by the governor on a nonpartisan basis; one lay member shall be selected by the chief justice of the supreme court; one lawyer member shall be selected on a nonpartisan basis by the governor; three lawyer members shall be selected the Washington State Bar Association. Each member of a court of appeals nonpartisan commission must have resided for at least one year within the division of the court of appeals for which the commission is responsible. The make-up of each court of appeals nonpartisan commission shall, to the extent feasible, reflect the ethnic and geographic diversity of the population of that division.

COMMENT: This proposed new section adds the Court of Appeals nominating commissions. The membership is taken almost entirely from the Walsh Commission report, with two changes. First, the Walsh Commission recommended that three lawyer members be selected by "the relevant county bar". Each Court of Appeals division consists of multiple counties. It is unclear how these county bars would work together to appoint members to the commissions. It seems much more practical to have the state bar select the members. Second, this section specifies that the members appointed to a Court of Appeals commission must reside within that division of the court. The requirement of consideration of ethnic and geographic diversity is based upon

Arizona's law establishing nonpartisan judicial nominating commissions. See Arizona Constitution, Art. 6, Sec. 41(C).

(4) Attorney members of the supreme court nonpartisan commission and the court of appeals nonpartisan commissions shall have resided in this state and shall have been admitted to practice within this state by the supreme court for at least five years. Nonattorney members shall have resided in this state for at least five years, and shall not be judges, retired judges, nor admitted to practice before the supreme court. None of the attorney or nonattorney members of the commissions shall hold any governmental office, elective or appointive, for profit. No attorney member is eligible for appointment to any judicial office of this state until one year after membership in the commission terminates. *COMMENT: This proposed new section is based upon Arizona's law establishing*

nonpartisan judicial nominating commissions. See Arizona Constitution, Art. 6, Sec. 41(G).

(5) The members of the commissions shall select one of their members to serve as chair. No commission member, ~~other than a judge~~, may hold public office. No commission member may hold an official position in a political party. Members shall be compensated in accordance with RCW 43.03.240 in addition to travel expenses provided by RCW 43.03.050 and 43.03.060. The supreme court may adopt rules to administer the commissions.

COMMENT: This is taken verbatim from section 2(1) of SB 5015. The only changes are to add change the singular commission to plural commissions, and to eliminate judges from service on the commissions..

(6) The nonpartisan judicial commission members shall serve six-year terms. The initial members shall have their terms staggered as follows: the six members of the supreme court commission selected from the court of appeals commissions shall determine by lot that two shall serve a two-year term, two a four-year term, and two a six-year term; the legislature shall designate that two of the four members appointed to each

commission shall serve two-year terms, one a four-year term, and one a six-year term; the governor shall designate that one of the lay members appointed to each commission shall serve a four-year term and the other a six-year term; the Washington State Bar Association shall designate that one of the lawyers appointed to each commission shall serve a two-year term, one a four-year term, and one a six-year term; and the members appointed by the chief justice shall serve six-year terms. Thereafter, members must be appointed for six-year terms.

COMMENT: This section follows SB 5015 in calling for initial staggered terms, with all subsequent terms six years.

Sec. 3. RCW 2.06.080 and 1969 ex.s. c 221 s 8 are each amended to read as follows:

If a vacancy occurs in the office of a judge of the court, the governor shall appoint ((a)) one of the three persons nominated by the court of appeals nonpartisan judicial commission for the division in which the vacancy has occurred under section 2 of this act to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election and the judge so elected shall hold the office for the remainder of the unexpired term. If the governor fails to appoint any of the nominees within sixty days after the list of nominees is submitted, the court of appeals nonpartisan judicial commission for the division in which the vacancy has occurred shall appoint one of the nominees to fill the vacancy.

COMMENT: Identical to section 3 of SB 5015, except to specify the Court of Appeals Nonpartisan commission for Court of Appeals positions. The single underline and single strikeout appear in SB 5015, the double underline and strikeout are changes from SB 5015.

NEW SECTION. Sec. 4. Prior to making recommendations to the governor, each commission shall conduct investigations, hold public hearings and take public testimony. An executive session as prescribed by rule may be held upon a two-thirds vote of the members of the commission in a public hearing. Final decisions as to recommendations shall be made without regard to political affiliation in an impartial and objective manner. Each commission shall consider the diversity of the population and the geographical diversity of the residences of the applicants; the primary consideration, however, shall be merit. Voting shall be in a public hearing.

COMMENT: This proposed new section is based upon Arizona's law establishing nonpartisan judicial nominating commissions. See Arizona Constitution, Art. 6, Sec. 41(J).

NEW SECTION. **Sec. 45.** This act takes effect if the proposed amendment to Article IV, section 3 of the state Constitution requiring the governor to fill vacancies in the supreme court in accordance with statute is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety.

COMMENT: Identical to section 4 of SB 5015. No changes were made.

SJR 8200 as proposed by Sen. Jacobsen and Sen. Deccio
Amendment to Wash. Const. Art IV section 3

Revised draft language amend SJR 8200

. . . If a vacancy occurs in the office of a judge of the supreme court the governor shall only appoint a person ~~as provided by statute~~ to ensure the number of judges as specified by the legislature, to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold the office for the remainder of the unexpired term, provided, that the legislature may enact a statute requiring the governor to fill such a vacancy from a list of three to five persons recommended by a nonpartisan nominating commission comprising not less than seven members, the majority of whom shall be nonattorney members, and the membership of which shall be geographically representative and ethnically diverse.

(Language marked with ~~double strikethrough marks~~ is proposed to be deleted from the current SJR 8200. Language marked with double underlining is proposed new language to be added to the bill.)

Notes: The proposed amendments to the bill are intended to achieve the following:

1. The Legislature will have full discretion as to whether to pass a statute establishing a nominating commission.
2. The commission, if established, must be nonpartisan.
3. The majority of the commission members must be nonattorneys.
4. The commission must reflect ethnic and geographic diversity.
5. The commission must have a large enough membership to allow for ethnic and geographic diversity (SB 5015 specifies 7 members, whereas the Walsh Commission Report proposes a Supreme Court nominating commission of 15 (9 lay members and 6 lawyer members).
6. The slate of candidates must be large enough to allow the Governor some reasonable flexibility in making an appointment (The bill currently specifies a slate of 3 nominees, whereas the Walsh Commission Report proposes that 5 names be forwarded to the Governor - thus, the proposed amendment provides for "3 to 5" nominees.).