

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1324 Session of
2008INTRODUCED BY EARLL, A. WILLIAMS, PICCOLA, FOLMER, M. WHITE,
ERICKSON, C. WILLIAMS, PIPPY AND VANCE, APRIL 9, 2008

REFERRED TO JUDICIARY, APRIL 9, 2008

A JOINT RESOLUTION

1 Proposing integrated amendments to the Constitution of the
2 Commonwealth of Pennsylvania, changing and adding provisions
3 relating to selection of justices and judges.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby resolves as follows:

6 Section 1. The following integrated amendments to the
7 Constitution of Pennsylvania are proposed in accordance with
8 Article XI:

9 (1) That section 8(b) of Article IV be amended to read:

10 § 8. Appointing power.

11 * * *

12 (b) [The] Except as provided in Article V, the Governor
13 shall fill vacancies in offices to which he appoints by
14 nominating to the Senate a proper person to fill the vacancy
15 within 90 days of the first day of the vacancy and not
16 thereafter. The Senate shall act on each executive nomination
17 within 25 legislative days of its submission. If the Senate has
18 not voted upon a nomination within 15 legislative days following

1 such submission, any five members of the Senate may, in writing,
2 request the presiding officer of the Senate to place the
3 nomination before the entire Senate body whereby the nomination
4 must be voted upon prior to the expiration of five legislative
5 days or 25 legislative days following submission by the
6 Governor, whichever occurs first. If the nomination is made
7 during a recess or after adjournment sine die, the Senate shall
8 act upon it within 25 legislative days after its return or
9 reconvening. If the Senate for any reason fails to act upon a
10 nomination submitted to it within the required 25 legislative
11 days, the nominee shall take office as if the appointment had
12 been consented to by the Senate. [The] Except as provided in
13 Article V, the Governor shall in a similar manner fill vacancies
14 in the offices of Auditor General, State Treasurer, [justice,
15 judge, justice of the peace] judge, magisterial district judge
16 and in any other elective office he is authorized to fill. In
17 the case of a vacancy in an elective office, a person shall be
18 elected to the office on the next election day appropriate to
19 the office unless the first day of the vacancy is within two
20 calendar months immediately preceding the election day in which
21 case the election shall be held on the second succeeding
22 election day appropriate to the office.

23 * * *

24 (2) That sections 13, 14 and 15 of Article V be amended to
25 read:

26 § 13. [Election] Selection of justices, judges and [justices of
27 the peace] magisterial district judges; vacancies.

28 (a) Justices, judges, other than judges of the Superior
29 Court and the Commonwealth Court, and [justices of the peace]
30 magisterial district judges shall be elected at the municipal

1 election next preceding the commencement of their respective
2 terms of office by the electors of the [Commonwealth or the]
3 respective districts in which they are to serve.

4 (b) A vacancy in the office of [justice, judge or justice of
5 the peace] judge, other than judge of the Superior Court and the
6 Commonwealth Court, or magisterial district judge shall be
7 filled by appointment by the Governor. The appointment shall be
8 with the advice and consent of two-thirds of the members elected
9 to the Senate, except in the case of [justices of the peace]
10 magisterial district judges which shall be by a majority. The
11 person so appointed shall serve for a term ending on the first
12 Monday of January following the next municipal election more
13 than ten months after the vacancy occurs or for the remainder of
14 the unexpired term whichever is less.[, except in the case of
15 persons selected as additional judges to the Superior Court,
16 where the General Assembly may stagger and fix the length of the
17 initial terms of such additional judges by reference to any of
18 the first, second and third municipal elections more than ten
19 months after the additional judges are selected.] The manner by
20 which any additional judges are selected shall be provided by
21 this section for the filling of vacancies in judicial offices.

22 (b.1) The Governor shall appoint each justice of the Supreme
23 Court and judge of the Superior Court and the Commonwealth Court
24 to the initial term of that justice or judge. The Governor shall
25 nominate to the Senate individuals for appointment exclusively
26 from the list of individuals recommended for appointment by the
27 Appellate Court Nominating Commission described under section
28 14(a) and the appointment shall be with the advice and consent
29 of a majority of the members elected to the Senate. Within 30
30 days after receiving a list of recommendations from the

1 commission, the Governor shall nominate to the Senate one person
2 from the list to fill the vacancy for which the list was
3 submitted. The Senate shall act on each nomination of a justice
4 of the Supreme Court or judge of the Superior Court and the
5 Commonwealth Court within 15 legislative days after receiving
6 the nomination from the Governor and shall notify the Governor
7 of the action it took within 24 hours of taking it. If the
8 nomination is made during a recess or after adjournment sine
9 die, the Senate shall act upon it within 15 legislative days
10 after its return or reconvening and notify the Governor as
11 provided in this subsection. If the Senate for any reason fails
12 to act upon a nomination submitted to it within the required
13 number of days after submission by the Governor, the nominee
14 shall take office as if the appointment had been consented to by
15 the Senate. The Governor shall make a substitute nomination from
16 the commission's list within 30 days after receiving
17 notification from the Senate of the rejection of a prior
18 nominee, and the Senate shall act upon the nomination in the
19 manner prescribed in this subsection. If the Senate rejects a
20 total of three nominations made for a specific vacancy, the
21 commission shall appoint any other person on the list and the
22 appointee shall take office upon notification of the appointment
23 by the commission and neither the Governor nor the Senate shall
24 participate further in the appointment process for that vacancy.

25 (b.2) A vacancy in the office of justice of the Supreme
26 Court or judge of the Superior Court or the Commonwealth Court
27 shall be filled by the procedure provided in section 13(b.1).
28 Additional judges to the Superior Court or the Commonwealth
29 Court shall be selected as provided in section 13(b.1).

30 (c) The provisions of section 13(b) and (b.2) shall not

1 apply [either] in the case of a vacancy to be filled by
2 retention election as provided in section 15(b)[, or]. Section
3 13(b) shall not apply in the case of a vacancy created by
4 failure of a [justice or] judge to file a declaration for
5 retention election as provided in section 15(b). In the case of
6 a vacancy occurring at the expiration of an appointive term
7 under section 13(b), the vacancy shall be filled by election as
8 provided in section 13(a).

9 [(d) At the primary election in 1969, the electors of the
10 Commonwealth may elect to have the justices and judges of the
11 Supreme, Superior, Commonwealth and all other statewide courts
12 appointed by the Governor from a list of persons qualified for
13 the offices submitted to him by the Judicial Qualifications
14 Commission. If a majority vote of those voting on the question
15 is in favor of this method of appointment, then whenever any
16 vacancy occurs thereafter for any reason in such court, the
17 Governor shall fill the vacancy by appointment in the manner
18 prescribed in this subsection. Such appointment shall not
19 require the consent of the Senate.]

20 (e) Each justice or judge of the Superior Court or the
21 Commonwealth Court appointed by the Governor under section
22 [13(d)] 13(b.1) or (b.2) shall hold office for an initial term
23 ending the first Monday of January following the next municipal
24 election more than [24] 48 months following the appointment.

25 § 14. [Judicial Qualifications] Appellate Court Nominating
26 Commission.

27 [(a) Should the method of judicial selection be adopted as
28 provided in section 13 (d), there shall be a Judicial
29 Qualifications Commission, composed of four non-lawyer electors
30 appointed by the Governor and three non-judge members of the bar

1 of the Supreme Court appointed by the Supreme Court. No more
2 than four members shall be of the same political party. The
3 members of the commission shall serve for terms of seven years,
4 with one member being selected each year. The commission shall
5 consider all names submitted to it and recommend to the Governor
6 not fewer than ten nor more than 20 of those qualified for each
7 vacancy to be filled.

8 (b) During his term, no member shall hold a public office or
9 public appointment for which he receives compensation, nor shall
10 he hold office in a political party or political organization.

11 (c) A vacancy on the commission shall be filled by the
12 appointing authority for the balance of the term.]

13 (a) There shall be established an independent commission
14 within the Executive Department known as the Appellate Court
15 Nominating Commission. The commission shall consist of 14
16 Pennsylvania residents who are 18 years of age or older. Six
17 members shall be public members, who shall be selected as
18 provided by law. Four members shall be appointed by the Governor
19 and four members shall be appointed by the General Assembly. The
20 members appointed by the General Assembly shall be appointed as
21 follows: one each shall be appointed by the President pro
22 tempore of the Senate, the Minority Leader of the Senate, the
23 Speaker of the House of Representatives and the Minority Leader
24 of the House of Representatives.

25 (b) The General Assembly shall provide for the nomination of
26 public members by groups located in Pennsylvania, including
27 civic groups, public safety groups, unions, business
28 organizations, deans of law schools and other professional
29 associations of individuals who are not lawyers, and shall
30 further provide for the selection of public members from

individuals nominated by those groups. No one holding elective or appointive public office, or designees or appointees of anyone holding elective or appointive public office, shall participate in the nomination or appointment of public members, provided that the elections officer of the Commonwealth may be designated to facilitate the process of nominating and appointment of public members.

(c) No fewer than two of the members appointed by the Governor and each of the members appointed by the General Assembly shall be members of the bar of the Supreme Court who are not justices, judges or magisterial district judges. The members appointed by the Governor shall be residents of at least four different counties. No more than two of the members appointed by the Governor shall be registered in the same political party.

(d) Each member of the commission shall have been a resident of this Commonwealth for one year prior to that member's appointment and shall reside in this Commonwealth during that member's term. In making appointments to the commission, each nominating or appointing authority shall take into consideration that the commission should include men and women as well as individuals from the civic, labor and business communities and individuals who come from racially and ethnically diverse backgrounds and who reflect the geographic diversity of this Commonwealth.

(e) Each member shall be appointed for a four-year term. Each member shall serve only until the end of that member's term. A member who has served a full term shall not be permitted to serve on the commission during the next succeeding term. An appointment of two years or less, whether by initial appointment

1 or by appointment to fill an unexpired term, shall not be deemed
2 a full term. A vacancy shall be filled for the remainder of the
3 term to which the member was appointed in the same manner as the
4 vacating member was appointed, except that the General Assembly
5 may provide for a different manner for filling the vacancy of a
6 public member.

7 (f) No member, during the member's term, shall hold office
8 in any political party or political organization or hold elected
9 or appointed public office, compensated or uncompensated, except
10 that members may serve as part-time solicitors to units of local
11 government. Neither any employee of the unified judicial system
12 nor any lobbyist shall be eligible for appointment to the
13 commission. Members shall not be compensated for their services
14 as members of the commission, but shall be reimbursed for
15 expenses necessarily incurred in the discharge of their official
16 duties in accordance with Commonwealth policy in effect for the
17 Executive Department.

18 (g) The General Assembly may provide for additional
19 qualifications of members of the commission, not inconsistent
20 with this article, as it deems appropriate in furthering the
21 purposes of this article.

22 (h) The General Assembly shall provide for the manner of
23 operation of the commission, except that the commission shall
24 establish its own rules of procedure and shall be given
25 authority to operate independently consistent with the
26 provisions of this article.

27 (i) Whenever a vacancy occurs in the office of justice of
28 the Supreme Court or judge of the Superior Court or the
29 Commonwealth Court, the commission shall publicly announce the
30 vacancy and solicit applications. When it is known that a

vacancy on the Supreme Court, the Superior Court or the Commonwealth Court will occur in the future on a date certain, the selection process shall begin no later than 90 days prior to that date. From the applications received, the commission shall agree, by the affirmative votes from at least eight of the members, on a list of five individuals most qualified to hold the office and shall submit the list to the Governor. Only one list may be supplied by the commission for each vacancy. In making their selection, the members shall consider each applicant's qualifications and each person whose name is submitted to the Governor shall:

(i) be a licensed member of the bar of the Supreme Court in good standing;

(ii) for an aggregate of at least ten years preceding the person's selection, have either practiced law, served as judge of a court or courts of record in this Commonwealth, served as a judge of a Federal court, or been engaged in a law-related occupation; and

(iii) have demonstrated integrity, judicial temperament, professional competence and experience, and commitment to the community.

The commission shall consider that each of the appellate courts should include both men and women who come from racially and ethnically diverse backgrounds and who reflect the geographic diversity of this Commonwealth.

(j) The General Assembly may provide for other procedural provisions relating to the nomination of justices and judges, not inconsistent with this article, as it may deem necessary to carry out the purposes of this article.

(k) The commission shall be provided with staff and its

budget administered as provided by law. The budget request for
the commission shall be made by the Governor.

§ 15. Tenure of justices, judges and [justices of the peace]
magisterial district judges.

(a) [The] Except as provided in section 13(e), the regular
term of office of justices and judges shall be ten years and the
regular term of office for judges of the municipal court and
traffic court in the City of Philadelphia and of [justices of
the peace] magisterial district judges shall be six years. The
tenure of any justice or judge shall not be affected by changes
in judicial districts or by reduction in the number of judges.

(b) A justice or judge [elected under section 13(a),] of the
Superior Court or the Commonwealth Court appointed under section
[13(d)] 13(b.1) or (b.2) or retained under this section 15(b) or
a judge elected under section 13(a) or retained under this
section 15(b) may file a declaration of candidacy for retention
election with the officer of the Commonwealth who under law
shall have supervision over elections on or before the first
Monday of January of the year preceding the year in which [his]
the term of office of the justice or judge expires. If no
declaration is filed, a vacancy shall exist upon the expiration
of the term of office of such justice or judge, to be filled by
[election under section 13(a) or by appointment under section
13(d) if applicable] appointment under section 13(b.1) or by
election under section 13(a). If a justice or judge files a
declaration, [his name] the name of the justice or judge shall
be submitted to the electors without party designation, on a
separate judicial ballot or in a separate column on voting
machines, at the municipal election immediately preceding the
expiration of the term of office of the justice or judge, to

1 determine only the question whether [he] the justice or judge
2 shall be retained in office. If a majority is against retention,
3 a vacancy shall exist upon the expiration of [his] the term of
4 office of that justice or judge, to be filled by appointment
5 under section 13(b) or [under section 13(d) if applicable]
6 (b.2). If a majority favors retention, the justice or judge
7 shall serve for the regular term of office provided herein,
8 unless sooner removed or retired. At the expiration of each term
9 a justice or judge shall be eligible for retention as provided
10 herein, subject only to the retirement provisions of this
11 article.

12 Section 2. (a) Upon the first passage by the General
13 Assembly of these proposed constitutional amendments, the
14 Secretary of the Commonwealth shall proceed immediately to
15 comply with the advertising requirements of section 1 of Article
16 XI of the Constitution of Pennsylvania and shall transmit the
17 required advertisements to two newspapers in every county in
18 which such newspapers are published in sufficient time after
19 passage of these proposed constitutional amendments.

20 (b) Upon the second passage by the General Assembly of these
21 proposed constitutional amendments, the Secretary of the
22 Commonwealth shall proceed immediately to comply with the
23 advertising requirements of section 1 of Article XI of the
24 Constitution of Pennsylvania and shall transmit the required
25 advertisements to two newspapers in every county in which such
26 newspapers are published in sufficient time after passage of
27 these proposed constitutional amendments. The Secretary of the
28 Commonwealth shall submit the proposed constitutional amendments
29 under section 1 to the qualified electors of this Commonwealth
30 as a single ballot question at the first primary, general or

1 municipal election which meets the requirements of and is in
2 conformance with section 1 of Article XI of the Constitution of
3 Pennsylvania and which occurs at least three months after the
4 proposed constitutional amendments are passed by the General
5 Assembly.