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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1621 Session of  
2009

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INTRODUCED BY M. SMITH, GABIG, BRENNAN, CARROLL, MAHONEY,  
MARSICO, MILNE, MURT, M. O'BRIEN, ROSS, SANTARSIERO, SHAPIRO  
AND VITALI, JUNE 5, 2009

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REFERRED TO COMMITTEE ON JUDICIARY, JUNE 5, 2009

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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 section 13 of Article V be amended to read:

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

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

1 respective terms of office by the electors of the [Commonwealth  
2 or the] respective districts in which they are to serve.

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

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

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

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

29 (c) The provisions of section 13(b) and (b.2) shall not  
30 apply [either] in the case of a vacancy to be filled by

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

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

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

24 (3) That section 14 or Article V be amended to read:

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, federation of  
28 unions, business organizations, deans of law schools and other  
29 professional associations of individuals who are not lawyers,  
30 and shall further provide for the selection of public members

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

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

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

25 (e) Except for the initial members of the commission, whose  
26 terms shall be provided by law, each member shall be appointed  
27 for a four-year term. Each member shall serve only until the end  
28 of that member's term. A member who has served a full term shall  
29 not be permitted to serve on the commission during the next  
30 succeeding term. An appointment of two years or less, whether by

1 initial appointment or by appointment to fill an unexpired term,  
2 shall not be deemed a full term. A vacancy shall be filled for  
3 the remainder of the term to which the member was appointed in  
4 the same manner as the vacating member was appointed, except  
5 that the General Assembly may provide for a different manner for  
6 filling the vacancy of a 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) Whenever a vacancy occurs in the office of justice of  
23 the Supreme Court or judge of the Superior Court or the  
24 Commonwealth Court, the commission shall publicly announce the  
25 vacancy and solicit applications. When it is known that a  
26 vacancy on the Supreme Court, the Superior Court or the  
27 Commonwealth Court will occur in the future on a date certain,  
28 the selection process shall begin no later than 90 days prior to  
29 that date. From the applications received, the commission shall  
30 agree, by the affirmative votes from at least eight of the



1 members, on a list of at least two but no more than five  
2 individuals most qualified to hold the office and shall submit  
3 the list to the Governor. Only one list may be supplied by the  
4 commission for each vacancy. In making their selection, the  
5 members shall consider each applicant's qualifications and each  
6 person whose name is submitted to the Governor shall:

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

9 (ii) has practiced law, served as a judge of a Federal  
10 court, served on a court or courts of record of this  
11 Commonwealth or been engaged in a law-related occupation for an  
12 aggregate of at least ten years prior to the date of the  
13 nomination; and

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

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

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

25 (j) The commission shall be provided with staff and its  
26 budget administered as provided by law. The budget request for  
27 the commission shall be made by the Governor.

28 (4) That section 15 of Article V be amended to read:  
29 § 15. Tenure of justices, judges and [justices of the peace]  
30 magisterial district judges.

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

8 (b) A justice or judge [elected under section 13(a),] of the  
9 Superior Court or the Commonwealth Court appointed under section  
10 [13(d)] 13(b.1) or (b.2) or retained under this section 15(b) or  
11 a judge elected under section 13(a) or retained under this  
12 section 15(b) may file a declaration of candidacy for retention  
13 election with the officer of the Commonwealth who under law  
14 shall have supervision over elections on or before the first  
15 Monday of January of the year preceding the year in which [his]  
16 the term of office of the justice or judge expires. If no  
17 declaration is filed, a vacancy shall exist upon the expiration  
18 of the term of office of such justice or judge, to be filled by  
19 [election under section 13(a) or by appointment under section  
20 13(d) if applicable] appointment under section 13(b.1) or by  
21 election under section 13(a). If a justice or judge files a  
22 declaration, [his name] the name of the justice or judge shall  
23 be submitted to the electors without party designation, on a  
24 separate judicial ballot or in a separate column on voting  
25 machines, at the municipal election immediately preceding the  
26 expiration of the term of office of the justice or judge, to  
27 determine only the question whether [he] the justice or judge  
28 shall be retained in office. If a majority is against retention,  
29 a vacancy shall exist upon the expiration of [his] the term of  
30 office of that justice or judge, to be filled by appointment

1 under section 13(b) or [under section 13(d) if applicable]  
2 (b.2). If a majority favors retention, the justice or judge  
3 shall serve for the regular term of office provided herein,  
4 unless sooner removed or retired. At the expiration of each term  
5 a justice or judge shall be eligible for retention as provided  
6 herein, subject only to the retirement provisions of this  
7 article.

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

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

1 Assembly.