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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 860 Session of 2009

INTRODUCED BY EARLL, LEACH, M. WHITE, FOLMER, PICCOLA, ERICKSON, FERLO AND RAFFERTY, MAY 11, 2009

REFERRED TO JUDICIARY, MAY 11, 2009

A JOINT RESOLUTION

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

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

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

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

§ 8. Appointing power.

* * *

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

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

* * *

(2) That section 13 of Article V be amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The General Assembly shall provide for the nomination of public members by groups located in Pennsylvania, including civic groups, public safety groups, unions, business organizations, deans of law schools and other professional associations of individuals who are not lawyers, and shall 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 Secretary of the Commonwealth may be designated to facilitate the process of nomination and appointment of public members.

(c) Two of the members appointed by the Governor shall be lawyers who are licensed to practice law by the Supreme Court and who are not justices, judges or magisterial district judges. The other two members appointed by the Governor shall not be attorneys licensed to practice law by the Supreme Court and shall not be 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, except that the initial appointments shall have staggered terms as provided by law. 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 or by appointment to fill an unexpired term, shall not be deemed a full term. A vacancy shall be filled for the remainder of the term to which the member was appointed in the same manner as the vacating member was appointed, except that the General Assembly may provide for a different manner for filling the vacancy of a public member.

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

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

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

(i) Whenever a vacancy occurs in the office of justice of

the Supreme Court or judge of the Superior Court or the Commonwealth Court, the commission shall publicly announce the 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.

(4) That section 15 of Article V be amended to read:

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

(c) The provisions of subsection (b) shall not apply to magisterial district justices.

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

(b) Upon the second passage by the General Assembly of these proposed constitutional amendments, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required

advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of these proposed constitutional amendments. The Secretary of the Commonwealth shall submit the proposed constitutional amendments under section 1 to the qualified electors of this Commonwealth as a single ballot question at the first primary, general or municipal election which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania and which occurs at least three months after the proposed constitutional amendments are passed by the General Assembly.