
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 361 Session of
2017

INTRODUCED BY WILLIAMS, SCHWANK, WAGNER, HAYWOOD AND
RESCHENTHALER, FEBRUARY 15, 2017

REFERRED TO JUDICIARY, FEBRUARY 15, 2017

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

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

1 municipal election next preceding the commencement of their
2 respective terms of office by the electors of the [Commonwealth
3 or the] 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
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 Commonwealth Court to
24 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
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 Commonwealth Court shall
27 be filled by the procedure provided in section 13(b.1).
28 Additional judges to the Superior Court and Commonwealth Court
29 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
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 (3) That section 14 of Article V be amended to read:
26 § 14. [Judicial Qualifications] Appellate Court Nominating
27 Commission.

28 [(a) Should the method of judicial selection be adopted as
29 provided in section 13 (d), there shall be a Judicial
30 Qualifications Commission, composed of four non-lawyer electors

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

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

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

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

26 (b) The General Assembly shall provide for the nomination of
27 public members by groups located in Pennsylvania and shall
28 further provide for the selection of public members from
29 individuals nominated by those groups. No one holding elective
30 or appointive public office or designees or appointees of anyone

1 holding elective or appointive public office shall participate
2 in the nomination or appointment of public members, provided
3 that the Secretary of the Commonwealth may be designated to
4 facilitate the process of nomination and appointment of public
5 members. Each of the members appointed by the General Assembly
6 shall be members of the bar of the Supreme Court who are not
7 justices, judges or magisterial district judges. The members
8 appointed under this subsection shall be residents of at least
9 four different counties at the time of appointment and during
10 their terms. If a member becomes a resident of a county of that
11 of another member appointed by the General Assembly, the member
12 shall forfeit his or her membership and the General Assembly
13 shall appoint another member under this subsection.

14 (c) Two of the members appointed by the Governor shall be
15 lawyers who are licensed to practice law by the Supreme Court
16 and who are not justices, judges or magisterial district judges.
17 The other two members appointed by the Governor shall not be
18 attorneys licensed to practice law by the Supreme Court and
19 shall not be justices, judges or magisterial district judges.
20 The members appointed by the Governor shall be residents of at
21 least four different counties. No more than two of the members
22 appointed by the Governor shall be registered in the same
23 political party.

24 (d) Each member of the commission shall have been a resident
25 of this Commonwealth for one year prior to that member's
26 appointment and shall reside in this Commonwealth during that
27 member's term. In making appointments to the commission, each
28 nominating or appointing authority shall take into consideration
29 that the commission should include men and women as well as
30 individuals from the civic, labor and business communities and

1 individuals who come from racially and ethnically diverse
2 backgrounds and who reflect the geographic diversity of this
3 Commonwealth.

4 (e) Each member shall be appointed for a four-year term,
5 except that the initial appointments shall have staggered terms
6 as provided by law. Each member shall serve only until the end
7 of that member's term. A member who has served a full term shall
8 not be permitted to serve on the commission during the next
9 succeeding term. An appointment of two years or less, whether by
10 initial appointment or by appointment to fill an unexpired term,
11 shall not be deemed a full term. A vacancy shall be filled for
12 the remainder of the term to which the member was appointed in
13 the same manner as the vacating member was appointed, except
14 that the General Assembly may provide for a different manner for
15 filling the vacancy of a public member.

16 (f) No member, during the member's term, shall hold office
17 in any political party or political organization or hold elected
18 or appointed public office, compensated or uncompensated, except
19 that members may serve as part-time solicitors to units of local
20 government. Neither any employee of the unified judicial system
21 nor any lobbyist shall be eligible for appointment to the
22 commission. Members shall not be compensated for their services
23 as members of the commission, but shall be reimbursed for
24 expenses necessarily incurred in the discharge of their official
25 duties in accordance with Commonwealth policy in effect for the
26 Executive Department. Members of the General Assembly shall not
27 be eligible for appointment to the commission for a period of
28 one year following their service in the General Assembly.
29 Members of the judiciary shall not be eligible for appointment
30 to the commission for a period of one year following their

1 service on the judiciary. Governors and Lieutenant Governors
2 shall not be eligible for appointment to the commission for a
3 period of one year following their service as Governor or
4 Lieutenant Governor.

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

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

14 (i) Whenever a vacancy occurs in the office of justice of
15 the Supreme Court or judge of the Superior Court or
16 Commonwealth Court, the commission shall publicly announce the
17 vacancy and solicit applications. When it is known that a
18 vacancy on the Supreme Court, the Superior Court or
19 Commonwealth Court will occur in the future on a date certain,
20 the selection process shall begin no later than 90 days prior to
21 that date. From the applications received, the commission shall
22 agree, by the affirmative votes from at least eight of the
23 members, on a list of five individuals most qualified to hold
24 the office and shall submit the list to the Governor. Only one
25 list may be supplied by the commission for each vacancy. In
26 making their selection, the members shall consider each
27 applicant's qualifications and each person whose name is
28 submitted to the Governor shall:

29 (1) be a licensed member of the bar of the Supreme Court in
30 good standing;

1 (2) for an aggregate of at least 10 years preceding the
2 person's selection, have practiced law, served as judge of a
3 court or courts of record in this Commonwealth, served as a
4 judge of a Federal court or been engaged in a law-related
5 occupation; and

6 (3) have demonstrated integrity, judicial temperament,
7 professional competence and experience and commitment to the
8 community.

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

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

17 (k) The commission shall be provided with staff and its
18 budget administered as provided by law. The budget request for
19 the commission shall be made by the Governor as a separate item
20 in the Governor's budget submitted pursuant to section 12(a) of
21 Article VIII.

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

25 (a) [The] Except as provided in section 13(e), the regular
26 term of office of justices and judges shall be [ten] 10 years
27 and the regular term of office for judges of the municipal court
28 in the City of Philadelphia and of [justices of the peace]
29 magisterial district judges shall be six years. The tenure of
30 any justice or judge shall not be affected by changes in

1 judicial districts or by reduction in the number of judges.

2 (b) A justice or judge [elected under section 13(a),] of the
3 Superior Court or Commonwealth Court appointed under section
4 [13(d)] 13(b.1) or (b.2) or retained under this section [15(b)]
5 or a judge elected under section 13(a) or retained under this
6 section may file a declaration of candidacy for retention
7 election with the officer of the Commonwealth who under law
8 shall have supervision over elections on or before the first
9 Monday of January of the year preceding the year in which [his]
10 the term of office of the justice or judge expires. If no
11 declaration is filed, a vacancy shall exist upon the expiration
12 of the term of office of such justice or judge, to be filled by
13 [election under section 13(a) or by appointment under section
14 13(d) if applicable] appointment under section 13(b.1) or by
15 election under section 13(a). If a justice or judge files a
16 declaration, [his name] the name of the justice or judge shall
17 be submitted to the electors without party designation, on a
18 separate judicial ballot or in a separate column on voting
19 machines, at the municipal election immediately preceding the
20 expiration of the term of office of the justice or judge, to
21 determine only the question whether [he] the justice or judge
22 shall be retained in office. If a majority is against retention,
23 a vacancy shall exist upon the expiration of [his] the term of
24 office of that justice or judge, to be filled by appointment
25 under section 13(b) or [under section 13(d) if applicable]
26 (b.2). If a majority favors retention, the justice or judge
27 shall serve for the regular term of office provided herein,
28 unless sooner removed or retired. At the expiration of each term
29 a justice or judge shall be eligible for retention as provided
30 herein, subject only to the retirement provisions of this

1 article.

2 (c) The provisions of section 15(b) shall not apply to
3 magisterial district justices.

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

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