

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 941 Session of  
1989

INTRODUCED BY BORTNER, HAYDEN, HAGARTY, HECKLER, O'DONNELL,  
LASHINGER, BROUJOS, COWELL, MICHLOVIC, PISTELLA,  
J. L. WRIGHT, MERRY, McVERRY, MAIALE, HERMAN, JOSEPHS, FOX,  
KOSINSKI, REINARD, NAHILL, ITKIN, RITTER, SCHEETZ, CORRIGAN,  
BLAUM, LINTON, CARLSON, MELIO, BUNT, FLICK, BISHOP, WILSON,  
PICCOLA, McHALE, WOGAN, LEVDANSKY, ROEBUCK, EVANS, ACOSTA,  
WILLIAMS AND JAMES, APRIL 3, 1989

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 3, 1989

## A JOINT RESOLUTION

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

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

6 Section 1. The following amendment to the Constitution of  
7 Pennsylvania is proposed in accordance with Article XI:

8 That sections 13, 14 and 15 of Article V be amended to read:

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

11 (a) Justices of the Supreme Court and judges of the Superior  
12 Court and the Commonwealth Court shall be appointed to their  
13 initial term by the Governor, with the advice and consent of a  
14 majority of the members elected to the Senate. Within 45 days,  
15 but after 30 days of the date on which he first receives the

1 list of recommendations from the Judicial Nominating Commission,  
2 the Governor shall nominate from the list one person for each  
3 vacancy with respect to which the list of recommendations has  
4 been submitted. The Senate shall act on each nomination within  
5 45 days of its submission. If the nomination is made during a  
6 recess or after adjournment sine die, the Senate shall act upon  
7 it within 45 days after its return or reconvening. If the Senate  
8 fails to act upon a nomination submitted to it within the  
9 required 45 days, the nominee shall take office as if the Senate  
10 had consented to the nominee.

11 (b) A vacancy in the office of justice of the Supreme Court  
12 or judge of the Superior Court or the Commonwealth Court shall  
13 be filled by the procedure provided in section 13(a).

14 [(a)] (c) [Justices, judges] Judges, other than judges of  
15 the Superior Court and the Commonwealth Court, and justices of  
16 the peace shall be elected at the municipal election next  
17 preceding the commencement of their respective terms of office  
18 by the electors of the [Commonwealth or the] respective  
19 districts in which they are to serve.

20 [(b)] (d) A vacancy in the office of [justice,] judge, other  
21 than judge of the Superior Court or the Commonwealth Court, or  
22 justice of the peace shall be filled by appointment by the  
23 Governor. The appointment shall be with the advice and consent  
24 of [two-thirds] a majority of the members elected to the  
25 Senate[, except in the case of justices of the peace which shall  
26 be by a majority]. The person so appointed shall serve for a  
27 term ending on the first Monday of January following the next  
28 municipal election more than ten months after the vacancy occurs  
29 or for the remainder of the unexpired term whichever is less[,  
30 except in the case of persons selected as additional judges to

1 the Superior Court, where the General Assembly may stagger and  
2 fix the length of the initial terms of such additional judges by  
3 reference to any of the first, second and third municipal  
4 elections more than ten months after the additional judges are  
5 selected]. The manner by which any additional judges are  
6 selected shall be provided by section 13(b) and this section for  
7 the filling of vacancies in judicial offices.

8 [(c)] (e) The provisions of section 13(b) and section 13(d)  
9 shall not apply [either] in the case of a vacancy to be filled  
10 by retention election as provided in section 15(b)[, or]\_.  
11 Section 13(d) shall not apply in the case of a vacancy created  
12 by failure of a justice or judge to file a declaration for  
13 retention election as provided in section 15(b). In the case of  
14 a vacancy occurring at the expiration of an appointive term  
15 under section [13(b)] 13(d), the vacancy shall be filled by  
16 election as provided in section [13(a)] 13(c).

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

28 (e)] (f) Each justice of the Supreme Court or judge of the  
29 Superior Court or the Commonwealth Court appointed by the  
30 Governor under section [13(d)] 13(a) or section 13(b) shall hold

1 office for an initial term of four years ending the first Monday  
2 of January following the next municipal election more than [24]  
3 48 months following the appointment.

4 § 14. [Judicial Qualifications Commission] Judicial Nominating  
5 Commission.

6 [(a) Should the method of judicial selection be adopted as  
7 provided in section 13 (d), there shall be a Judicial  
8 Qualifications Commission, composed of four non-lawyer electors  
9 appointed by the Governor and three non-judge members of the bar  
10 of the Supreme Court appointed by the Supreme Court. No more  
11 than four members shall be of the same political party. The  
12 members of the commission shall serve for terms of seven years,  
13 with one member being selected each year. The commission shall  
14 consider all names submitted to it and recommend to the Governor  
15 not fewer than ten nor more than 20 of those qualified for each  
16 vacancy to be filled.

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

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

22 (a) There shall be a Judicial Nominating Commission which  
23 shall evaluate the qualifications of applicants for appointment  
24 to the office of justice of the Supreme Court or judge of the  
25 Superior Court or the Commonwealth Court. The commission shall  
26 include a fair representation of men and women and shall reflect  
27 fairly the geographical, political, economic and ethnic  
28 diversity of the Commonwealth.

29 (b) The commission shall consist of 16 Pennsylvania  
30 residents, of whom eight shall be appointed by the Governor and

1 two each shall be appointed by the President pro tempore of the  
2 Senate, the Speaker of the House of Representatives, the Senate  
3 Minority Leader and the House Minority Leader. Of the eight  
4 members appointed by the Governor, only four shall be members of  
5 the bar of the Supreme Court, and no more than four shall be  
6 enrolled in the same political party. One of the two members  
7 appointed by the President pro tempore of the Senate, the  
8 Speaker of the House of Representatives, the Senate Minority  
9 Leader and the House Minority Leader shall be a member of the  
10 bar of the Supreme Court.

11 (c) Each commissioner shall be appointed for a full four-  
12 year term, except as provided for initial commissioners. The  
13 initial commissioners shall serve as follows: the commissioners  
14 appointed by the Governor, two for one year, two for two years,  
15 two for three years and two for four years; the commissioners  
16 appointed by the President pro tempore of the Senate, one for  
17 four years and one for one year; the commissioners appointed by  
18 the Speaker of the House of Representatives, one for four years  
19 and one for one year; the commissioners appointed by the  
20 Minority Leader in the Senate, one for three years and one for  
21 two years; and the commissioners appointed by the Minority  
22 Leader in the House of Representatives, one for three years and  
23 one for two years. The Governor shall designate one of the  
24 commissioners as chairman of the commission. The chairman shall  
25 serve at the pleasure of the Governor.

26 (d) No commissioner shall be appointed to more than two  
27 successive full four-year terms. An appointment to fill an  
28 unexpired term which has less than two years to run shall not be  
29 deemed a full term. A vacancy on the commission shall be filled  
30 for the balance of the term in the same manner that the vacating

1 member was appointed. During his term of service, no  
2 commissioner shall hold a public office or public appointment,  
3 compensated or uncompensated, nor shall he hold office in any  
4 political party or political organization.

5 (e) Each commissioner shall receive a reasonable per diem in  
6 compensation for his service and shall be reimbursed for  
7 reasonable expenses incurred in the exercise of his duties.

8 (f) The commission shall establish its own rules of  
9 procedure and shall have the power, by law, to issue subpoenas  
10 and take testimony under oath concerning the qualifications of  
11 any applicant for judicial office within the jurisdiction of the  
12 commission.

13 (g) Whenever a vacancy occurs in the office of justice of  
14 the Supreme Court or judge of the Superior Court or the  
15 Commonwealth Court, the commission shall publicly advertise such  
16 vacancy and solicit applications. From the applications  
17 received, the commission shall prepare and submit to the  
18 Governor a list of at least five but not more than seven persons  
19 who are qualified to hold that judicial office. Each person  
20 recommended to the Governor shall, for an aggregate of ten  
21 years, have either practiced law or served as judge of a court  
22 or courts of record in Pennsylvania or have been engaged in a  
23 law-related occupation. The list shall be submitted to the  
24 Governor no later than 90 days after the vacancy occurs. When  
25 more than one vacancy on the same court exists, the number of  
26 persons on the list which is submitted to the Governor shall be  
27 increased by two persons for each additional vacancy.

28 (h) The list submitted to the Governor shall contain the  
29 names of those persons who received affirmative votes from ten  
30 or more commissioners, provided that the number of persons shall

1 not exceed the limitations imposed by subsection (g).  
2 Immediately following submission of the list to the Governor,  
3 the commission shall make public both the list and a statement  
4 concerning each person recommended to the Governor.

5 (i) If a justice or judge declares for retention at the  
6 conclusion of the initial four-year term, the commission shall  
7 reevaluate a justice's or judge's qualifications, including, but  
8 not limited to, judicial performance during the initial term and  
9 comments solicited from the public concerning judicial  
10 performance. The commission shall publicly disseminate its  
11 conclusion and its reasons as to whether the justice or judge  
12 should or should not be retained for a full ten-year term. The  
13 commission shall conduct such reviews and publicly state its  
14 recommendations and reasons prior to every retention election in  
15 which a justice of the Supreme Court or judge of the Superior  
16 Court or the Commonwealth Court seeks a regular term.

17 (j) The General Assembly shall appropriate adequate funds to  
18 the commission to provide for an adequate staff and fulfillment  
19 of the commission's responsibilities.

20 § 15. Tenure of justices, judges and justices of the peace.

21 (a) The regular term of office of justices and judges shall  
22 be ten years and the regular term of office for judges of the  
23 municipal court and traffic court in the City of Philadelphia  
24 and of justices of the peace shall be six years. The tenure of  
25 any justice or judge shall not be affected by changes in  
26 judicial districts or by reduction in the number of judges.

27 (b) A justice or judge [elected under section 13(a),] of the  
28 Superior Court or the Commonwealth Court appointed under section  
29 [13(d)] 13(a) or section 13(b) or retained under this section  
30 15(b) or a judge elected under section 13(c) or retained under

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

24       Section 2. Section 1 shall be submitted by the Secretary of  
25 the Commonwealth at the general or municipal election next held  
26 after the advertising requirements of section 1 of Article XI of  
27 the Constitution of Pennsylvania have been satisfied.