
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1

Session of
1989

INTRODUCED BY JUBELIRER, GREENLEAF, LOEPER, SCANLON, BRIGHTBILL,
WENGER, WILT, FISHER, HESS, TILGHMAN, HELFRICK, SHUMAKER,
SALVATORE, SHAFFER, LEMMOND, HOPPER, MADIGAN, CORMAN, BELL,
PUNT, GREENWOOD, BAKER, PETERSON, MUSTO, AFFLERBACH, LEWIS,
REIBMAN, STOUT, O'PAKE, PORTERFIELD AND ANDREZESKI,
JANUARY 20, 1989

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, MARCH 14, 1989

A JOINT RESOLUTION

1 Proposing amendments to the Constitution of the Commonwealth of
2 Pennsylvania, changing provisions relating to judicial
3 discipline; and providing for financial disclosure, for
4 budgeting and for the financial affairs of the judiciary.

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

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

9 (1) That section 17 of Article V be amended to read:

10 § 17. Prohibited activities and financial disclosure.

11 (a) Justices and judges shall devote full time to their
12 judicial duties, and shall not engage in the practice of law,
13 hold office in a political party or political organization, or
14 hold an office or position of profit in the government of the
15 United States, the Commonwealth or any municipal corporation or
16 political subdivision thereof, except in the armed service of

1 the United States or the Commonwealth.

2 (b) Justices and judges shall not engage in any activity
3 prohibited by law and shall not violate any canon of legal or
4 judicial ethics prescribed by the Supreme Court. Justices of the
5 peace shall be governed by rules or canons which shall be
6 prescribed by the Supreme Court.

7 (c) No justice, judge or justice of the peace shall be paid
8 or accept for the performance of any judicial duty or for any
9 service connected with his office, any fee, emolument or
10 perquisite other than the salary and expenses provided by law.

11 (d) No duties shall be imposed by law upon the Supreme Court
12 or any of the justices thereof or the Superior Court or any of
13 the judges thereof, except such as are judicial, nor shall any
14 of them exercise any power of appointment except as provided in
15 this Constitution.

16 (e) The Supreme Court shall promulgate financial disclosure
17 requirements for all justices, judges, justices of the peace and
18 other officers or employees of the unified judicial system which
19 shall provide for no less disclosure than provided by law for
20 members of the General Assembly. In addition, such disclosure
21 shall include that information deemed necessary for the fair and
22 impartial administration of justice. These requirements shall
23 prohibit any justice, judge, justice of the peace or other
24 officer or employee of the system from taking the oath of office
25 or entering or continuing upon his or her duties or receiving
26 compensation from public funds unless he or she has complied
27 with such financial disclosure requirements.

28 (2) That section 18 of Article V be amended to read:

29 § 18. Suspension, removal, discipline and compulsory
30 retirement.

1 (a) [There shall be a Judicial Inquiry and Review Board
2 having nine members as follows: three judges of the courts of
3 common pleas from different judicial districts and two judges of
4 the Superior Court, all of whom shall be selected by the Supreme
5 Court; and two non-judge members of the bar of the Supreme Court
6 and two non-lawyer electors, all of whom shall be selected by
7 the Governor.] There shall be a Judicial Conduct Board having 11
8 members as follows: one active judge of the court of common
9 pleas appointed by the Supreme Court; one active judge of an
10 appellate court appointed by the Supreme Court; one active
11 justice of the peace appointed by the Supreme Court; one non-
12 judge member of the bar of the Supreme Court appointed by the
13 Supreme Court; one non-judge member of the bar of the Supreme
14 Court appointed by the Governor; two non-lawyer electors
15 appointed by the Governor; one non-lawyer elector appointed by
16 the President pro tempore of the Senate; one non-lawyer elector
17 appointed by the Minority Leader of the Senate; one non-lawyer
18 elector appointed by the Speaker of the House of
19 Representatives; and one non-lawyer elector appointed by the
20 Minority Leader of the House of Representatives. No member of
21 the General Assembly shall be eligible for membership on the
22 board.

23 (b) [The] Except for the initial appointees whose terms
24 shall be provided by the schedule to this amendment, the members
25 shall serve for terms of four years, provided that a member,
26 rather than his successor, shall continue to participate in any
27 hearing in progress at the end of his term. Board membership by
28 a judge shall terminate if the member ceases to hold the
29 judicial position that qualified him for the appointment.
30 Membership shall also terminate if a member attains a position

1 that would have rendered him ineligible for appointment at the
2 time of his appointment. A vacancy on the board shall be filled
3 by the respective appointing authority for the balance of the
4 term. The respective appointing authority may remove a member
5 only for cause. No member shall serve more than four consecutive
6 years[; he] but may be reappointed after a lapse of one year.
7 [Annually] The Governor shall convene the board for its first
8 meeting, and, at that meeting and annually thereafter, the
9 members of the board shall elect a chairman. The board shall act
10 only with the concurrence of a majority of its members.

11 (c) A member shall not hold office in a political party or
12 political organization. [Members, other than judges, shall be
13 compensated for their services as the Supreme Court shall
14 prescribe.] All members shall be reimbursed for expenses
15 necessarily incurred in the discharge of their official duties.
16 The board shall appoint a full-time executive director, a
17 counsel and such other staff as it shall deem necessary and
18 proper, shall adopt rules for its operation and shall annually
19 submit a proposed operating budget to the General Assembly and
20 the Governor.

21 (d) Under the procedure prescribed herein, any justice [or],
22 judge or justice of the peace may be suspended, removed from
23 office or otherwise disciplined or censured for violation of
24 section 17 of this article, misconduct in office, neglect of
25 duty, failure to perform [his duties] the duties of that office,
26 or conduct which prejudices the proper administration of justice
27 or brings the judicial office into disrepute, whether or not
28 such conduct occurred while acting in a judicial capacity or is
29 prohibited by law, and may be retired for disability seriously
30 interfering with the performance of his duties.

1 (e) The board shall keep informed as to matters relating to
2 grounds for suspension, removal, discipline, censure or
3 compulsory retirement of justices [or], judges or justices of
4 the peace. It shall receive complaints or reports, formal or
5 informal, from any source pertaining to such matters, and shall
6 make such preliminary investigations as it deems necessary,
7 which preliminary investigations shall be confidential.

8 (f) The board, after such investigation and having found
9 probable cause, may order a hearing concerning the suspension,
10 removal, discipline, censure or compulsory retirement of a
11 justice [or], judge or justice of the peace. If the continued
12 service of a justice, judge or justice of the peace poses a
13 substantial and imminent threat to the fair and impartial
14 administration of justice or if the justice, judge or justice of
15 the peace has been indicted for a felony, the board may order
16 the immediate suspension of that justice, judge or justice of
17 the peace, with or without compensation, pending a final
18 resolution of the matter. The board's orders for attendance of
19 or testimony by witnesses or for the production of documents at
20 any hearing or investigation shall be enforceable by contempt
21 proceedings. Any hearing ordered by the board shall be conducted
22 consistent with the principles of due process and the rules of
23 evidence and shall be confidential except that the justice,
24 judge or justice of the peace who is the subject of the
25 proceeding may waive confidentiality. The filing of papers with
26 the board and the giving of testimony before the board shall be
27 privileged.

28 (g) [If, after hearing, the board finds good cause therefor,
29 it shall recommend to the Supreme Court the suspension, removal,
30 discipline or compulsory retirement of the justice or judge.]

1 If, after hearing, the board finds ~~good cause therefor~~ CLEAR AND
 2 CONVINCING EVIDENCE it shall order that a justice, judge or
 3 justice of the peace be suspended with or without compensation,
 4 removed, disciplined, censured or compulsorily retired. The
 5 board shall file the record of any hearing conducted by it with
 6 the Supreme Court within ten days of its order whether or not it
 7 ordered suspension, removal, discipline, censure or compulsory
 8 retirement. Upon the filing, the board shall make available for
 9 public inspection at the principal office of the board the
 10 nature and disposition of each charge, all findings of fact, and
 11 an opinion containing conclusions of law and any order of the
 12 board.

13 (h) [The Supreme Court shall review the record of the
 14 board's proceedings on the law and facts and may permit the
 15 introduction of additional evidence. It shall order suspension,
 16 removal, discipline or compulsory retirement, or wholly reject
 17 the recommendation, as it finds just and proper. Upon an order
 18 for compulsory retirement, the justice or judge shall be retired
 19 with the same rights and privileges were he retired under
 20 section 16 of this article. Upon an order for suspension or
 21 removal, the justice or judge shall be suspended or removed from
 22 office, and his salary shall cease from the date of such order.
 23 All papers filed with and proceedings before the board shall be
 24 confidential but upon being filed by the board in the Supreme
 25 Court, the record shall lose its confidential character. The
 26 filing of papers with and the giving of testimony before the
 27 board shall be privileged.] Upon the rendering of an order by
 28 the board, the procedure shall be as follows:

29 (1) The justice, judge or justice of the peace involved may
 30 either accept the order of the board or make written request to

1 the Chief Justice within 30 days after receipt of the order for
2 a review thereof by the Supreme Court.

3 (2) If the justice, judge or justice of the peace accepts
4 the order of the board or fails to request a review thereof by
5 the Supreme Court, the order of the board shall be effective.

6 Upon an order for compulsory retirement, the justice, judge or
7 justice of the peace shall be retired with the same rights and
8 privileges were he retired under section 16 of this article.

9 Upon an order for suspension without compensation or an order
10 for removal, the justice, judge or justice of the peace shall be
11 suspended or removed from office and his salary shall cease from
12 the date of the order.

13 (3) (i) If the justice, judge or justice of the peace seeks
14 review of an order of the board, the Supreme Court or, in the
15 case of a justice, an ad hoc court as set forth in subclause
16 (ii) shall review the board's findings of fact and conclusions
17 of law and the record of the proceedings upon which the board's
18 determination was based and may allow the introduction of
19 additional evidence. After the review, the Supreme Court or the
20 ad hoc court, as the case may be, may affirm, revise or reject
21 the ordered sanction.

22 (ii) In the event a Supreme Court justice is involved and
23 seeks review of an order of the board, the Court Administrator
24 of Pennsylvania Courts shall supervise the selection of an ad
25 hoc court of seven judges to be chosen by drawing lots from the
26 total combined membership of the Superior and Commonwealth
27 Courts, other than senior judges. The ad hoc court shall conduct
28 a review as set forth in subclause (i), and its decision shall
29 have the same effect as if rendered by the Supreme Court.

30 (4) If, after hearing, the board decides not to order

1 suspension, removal, discipline, censure or compulsory
2 retirement, or where an order is entered, the Supreme Court or
3 ad hoc court, as the case may be, may, on its own motion, and
4 shall, upon the petition of at least four members of the board,
5 have the decision of the board reviewed. Any review of the
6 decision of the board shall be initiated within 30 days of the
7 date that the record and decision of the board is filed with the
8 Supreme Court. After the review, the Supreme Court or ad hoc
9 court may affirm the decision of the board or impose a sanction
10 upon the justice, judge or justice of the peace.

11 (5) In reviewing an order of the board under clauses (3) and
12 (4), the Supreme Court or ad hoc court shall complete its review
13 and render its judgment within 60 days of the request for
14 review. If the review is not completed and judgment not rendered
15 within 60 days, the order of the board shall be imposed by the
16 board. At the end of the 60-day period, whether or not the
17 review is completed, the entire record of the board and the
18 Supreme Court or ad hoc court shall be made public and made
19 available for public inspection at the principal office of the
20 board.

21 (i) No justice [or], judge or justice of the peace shall
22 participate as a member of the board or of the Supreme Court in
23 any proceeding involving his suspension, removal, discipline,
24 censure or compulsory retirement.

25 (j) No judge shall participate as a member of the board in
26 any proceeding involving a judge of the same court.

27 [(j)] (k) The Supreme Court shall prescribe rules of
28 procedure [under this section] for its review of decisions by
29 the board.

30 [(k) The Supreme Court shall prescribe rules of procedure

1 for the suspension, removal, discipline and compulsory
2 retirement of justices of the peace.]

3 (l) A justice, judge or justice of the peace convicted of
4 misbehavior in office by a court, disbarred as a member of the
5 bar of the Supreme Court or removed under this section 18 shall
6 forfeit automatically his judicial office and thereafter be
7 ineligible for judicial office.

8 (m) A justice or judge who shall file for nomination for or
9 election to any public office other than a judicial office shall
10 forfeit automatically his judicial office.

11 (n) This section is in addition to and not in substitution
12 for the provisions for impeachment for misbehavior in office
13 contained in Article VI. No justice, judge or justice of the
14 peace against whom impeachment proceedings are pending in the
15 Senate shall exercise any of the duties of his office until he
16 has been acquitted.

17 (3) That Article V be amended by adding a section to read:
18 § 19. Financial affairs and budgets.

19 (a) As provided by law, the Supreme Court shall annually
20 submit to the Governor and the General Assembly proposed
21 operating budgets for the ensuing fiscal year for the Supreme
22 Court, Superior Court, Commonwealth Court, Court Administrator
23 of Pennsylvania and other statewide agencies, committees and
24 statewide units of the unified judicial system setting forth in
25 detail proposed expenditures classified by court, agency,
26 committee or unit for the year.

27 (b) The General Assembly shall include such operating budget
28 appropriations for the Supreme Court, Superior Court,
29 Commonwealth Court, Court Administrator of Pennsylvania and
30 other statewide agencies, committees and statewide units of the

1 unified judicial system as the General Assembly shall determine
2 to be necessary and reasonable in the general appropriation bill
3 or such separate appropriation bill as it deems appropriate. No
4 moneys shall be paid out of the State Treasury for the operation
5 of the unified judicial system except pursuant to an
6 appropriation approved by the General Assembly and upon warrant
7 issued by the proper officer.

8 (c) All fees, charges and other moneys received by the
9 Supreme Court, Superior Court, Commonwealth Court or other
10 statewide agency, committee or statewide unit of the unified
11 judicial system, with the exception of payments mandated to a
12 party by court order and fees assessed by the Supreme Court and
13 paid to the Disciplinary Board of the Supreme Court or for a
14 client security fund, shall be deposited in the State Treasury
15 for appropriation by the General Assembly for the operations of
16 the unified judicial system.

17 (d) The financial affairs of the Supreme Court, Superior
18 Court, Commonwealth Court or other court, agency, committee or
19 unit of the unified judicial system shall be subject to audits
20 made in accordance with generally accepted auditing standards
21 and shall be performed by the Auditor General.

22 Section 2. (a) The members of the Judicial Inquiry and
23 Review Board appointed heretofore shall vacate their offices 60
24 days after the issuance of the proclamation certifying voter
25 approval of the amendments to section 18 of Article V, and all
26 proceedings pending before the board and all records shall be
27 transferred to the Judicial Conduct Board.

28 (b) Of the members initially appointed to the Judicial
29 Conduct Board, the appellate judge shall be appointed for a two-
30 year term and the judge of the court of common pleas for a four-

1 year term. The justice of the peace first appointed shall serve
2 a three-year term. The non-judge member of the bar of the
3 Supreme Court first appointed by the Supreme Court shall serve a
4 two-year term. The non-judge member of the bar of the Supreme
5 Court first appointed by the Governor shall serve a three-year
6 term. The members first appointed by the President pro tempore
7 of the Senate and the Speaker of the House of Representatives
8 shall serve four-year terms. The members first appointed by the
9 Minority Leader of the Senate and the Minority Leader of the
10 House of Representatives shall serve two-year terms. The non-
11 lawyer elector first appointed by the Governor shall serve a
12 four-year term and the second non-lawyer elector shall serve a
13 three-year term.

14 Section 3. Paragraphs (1), (2) and (3) of section 1 shall
15 each be submitted by the Secretary of the Commonwealth as a
16 separate question to the qualified electors of this Commonwealth
17 at the primary, general or municipal election next held after
18 the advertising requirements of section 1 of Article XI of the
19 Constitution of Pennsylvania have been satisfied.