
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2

Session of
1993

INTRODUCED BY EVANS, PICCOLA, DeWEESE, ITKIN, MIHALICH, RIEGER,
HASAY, STEELMAN, DRUCE, FARGO, GORDNER, FAJT, FLICK,
CAPPABIANCA, MELIO, ZUG, KIRKLAND, BUXTON, MUNDY, LINTON,
COWELL, CESSAR, CARONE, LEVDANSKY, BAKER, REINARD, KREBS,
PLATTS, BATTISTO, SCHEETZ, ARMSTRONG, MASLAND, BUSH, GLADECK,
HECKLER, LYNCH, FARMER, CLYMER, FICHTER, STEIL, CORNELL,
RUBLEY, JOSEPHS, HUTCHINSON, SAURMAN, MICHLOVIC AND GERLACH,
JANUARY 27, 1993

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, DECEMBER 6, 1993

A JOINT RESOLUTION

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

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

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

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

9 § 8. Appointing power.

10 * * *

11 (b) [The] Except as provided in Article V, the Governor
12 shall fill vacancies in offices to which he appoints by
13 nominating to the Senate a proper person to fill the vacancy
14 within 90 days of the first day of the vacancy and not

1 thereafter. The Senate shall act on each executive nomination
2 within 25 legislative days of its submission. If the Senate has
3 not voted upon a nomination within 15 legislative days following
4 such submission, any five members of the Senate may, in writing,
5 request the presiding officer of the Senate to place the
6 nomination before the entire Senate body whereby the nomination
7 must be voted upon prior to the expiration of five legislative
8 days or 25 legislative days following submission by the
9 Governor, whichever occurs first. If the nomination is made
10 during a recess or after adjournment sine die, the Senate shall
11 act upon it within 25 legislative days after its return or
12 reconvening. If the Senate for any reason fails to act upon a
13 nomination submitted to it within the required 25 legislative
14 days, the nominee shall take office as if the appointment had
15 been consented to by the Senate. The Governor shall in a similar
16 manner fill vacancies in the offices of Auditor General, State
17 Treasurer, justice, judge, justice of the peace and in any other
18 elective office he is authorized to fill. In the case of a
19 vacancy in an elective office, a person shall be elected to the
20 office on the next election day appropriate to the office unless
21 the first day of the vacancy is within two calendar months
22 immediately preceding the election day in which case the
23 election shall be held on the second succeeding election day
24 appropriate to the office.

25 * * *

26 (2) That sections 13, 14 and 15 of Article V be amended to
27 read:

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

30 (a) Justices of the Supreme Court and judges of the Superior

1 Court and the Commonwealth Court shall be appointed to their
2 initial term by the Governor, with the advice and consent of a
3 majority of the members elected to the Senate. Within 30 days
4 after receipt of a list submitted by the judicial nominating
5 commission, the Governor shall nominate one person for each
6 vacancy for which a list of recommendations has been submitted.
7 The Senate shall act on each nomination within 45 days of its
8 submission. If the nomination is made during a recess or after
9 adjournment sine die, the Senate shall act upon such nomination
10 within 45 days after its return or reconvening. If the Senate
11 fails to act upon a nomination within the required 45 days, the
12 nominee shall take office as if the Senate had consented to the
13 nomination. The Governor shall make a substitute nomination from
14 the list within 30 days after receiving notification from the
15 Senate of the rejection of a prior nominee. If the Senate
16 rejects a total of three nominations made for a particular
17 vacancy, within 30 days after receiving notification from the
18 Senate of the rejection of the third nominee for that vacancy,
19 the Governor shall appoint, without the advice and consent of
20 the Senate, any person on the list submitted by the commission,
21 whether or not that person had been previously nominated.

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

25 [(a) Justices, judges] (c) Judges, other than judges of the
26 Superior Court and the Commonwealth Court, and justices of the
27 peace shall be elected at the municipal election next preceding
28 the commencement of their respective terms of office by the
29 electors of the [Commonwealth or the] respective districts in
30 which they are to serve.

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

19 [(c)] (e) The provisions of section 13(b) and section 13(d)
20 shall not apply [either] in the case of a vacancy to be filled
21 by retention election as provided in section 15(b)[, or].
22 Section 13(d) shall not apply in the case of a vacancy created
23 by failure of a [justice or] judge to file a declaration for
24 retention election as provided in section 15(b). In the case of
25 a vacancy occurring at the expiration of an appointive term
26 under section [13(b)] 13(d), the vacancy shall be filled by
27 election as provided in section [13(a)] 13(c).

28 [(d) At the primary election in 1969, the electors of the
29 Commonwealth may elect to have the justices and judges of the
30 Supreme, Superior, Commonwealth and all other statewide courts

1 appointed by the Governor from a list of persons qualified for
2 the offices submitted to him by the Judicial Qualifications
3 Commission. If a majority vote of those voting on the question
4 is in favor of this method of appointment, then whenever any
5 vacancy occurs thereafter for any reason in such court, the
6 Governor shall fill the vacancy by appointment in the manner
7 prescribed in this subsection. Such appointment shall not
8 require the consent of the Senate.

9 (e)] (f) Each justice or judge of the Superior Court or
10 Commonwealth Court appointed by the Governor under section
11 [13(d)] 13(a) or section 13(b) shall hold office for an initial
12 term of ten years ending the first Monday of January following
13 the next municipal election more than [24] 120 months following
14 the appointment.

15 § 14. Judicial [Qualifications] Nominating Commission.

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

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

30 (c) A vacancy on the commission shall be filled by the

1 appointing authority for the balance of the term.]

2 (a) There shall be a Judicial Nominating Commission which
3 shall evaluate the qualifications of applicants for appointment
4 to the office of justice of the Supreme Court or judge of the
5 Superior Court or the Commonwealth Court.

6 (b) The commission shall consist of 12 Pennsylvania
7 residents appointed by the Governor. The Governor shall choose
8 one member of the bar of the Supreme Court from a list of three
9 non-judge members of the bar of the Supreme Court submitted by
10 the President pro tempore of the Senate and one non-lawyer
11 elector from a list of three non-lawyer electors submitted by
12 the President pro tempore of the Senate. The Governor shall
13 choose one member of the bar of the Supreme Court from a list of
14 three non-judge members of the bar of the Supreme Court
15 submitted by the Speaker of the House of Representatives and one
16 non-lawyer elector from a list of three non-lawyer electors
17 submitted by the Speaker of the House of Representatives. The
18 Governor shall choose one member of the bar of the Supreme Court
19 from a list of three non-judge members of the bar of the Supreme
20 Court submitted by the Minority Leader of the Senate and one
21 non-lawyer elector from a list of three non-lawyer electors
22 submitted by the Minority Leader of the Senate. The Governor
23 shall choose one member of the bar of the Supreme Court from a
24 list of three non-judge members of the bar of the Supreme Court
25 submitted by the Minority Leader of the House of Representatives
26 and one non-lawyer elector from a list of three non-lawyer
27 electors submitted by the Minority Leader of the House of
28 Representatives. Of the remaining four appointments, no more
29 than two may be non-judge members of the bar of the Supreme
30 Court. No more than six of the 12 commissioners shall be

1 enrolled in the same political party. In making appointments to
2 the commission, the Governor shall ensure that the commission
3 includes both men and women and has commissioners who are
4 members of the labor, business and civic communities;
5 commissioners who come from racially and ethnically diverse
6 backgrounds; and commissioners who reflect the geographical
7 diversity of this Commonwealth. In submitting lists of names to
8 the Governor, the President pro tempore of the Senate, the
9 Speaker of the House of Representatives, the Minority Leader of
10 the Senate and the Minority Leader of the House of
11 Representatives shall take into account the same factors as the
12 Governor must consider in making appointments to the commission.

13 (c) Except for the initial appointees, whose terms shall be
14 provided by the schedule to this article, each commissioner
15 shall be appointed for a full four-year term. The Governor shall
16 convene the commission for its first meeting. At that meeting
17 and annually thereafter the members of the commission shall
18 elect a chairperson.

19 (d) No commissioner shall be appointed to more than two
20 successive full four-year terms. An appointment to fill an
21 unexpired term which has less than two years to run shall not be
22 deemed a full term. Each commissioner shall serve only until the
23 end of that commissioner's term. A vacancy shall be filled by
24 the Governor for the unexpired portion of the term in the same
25 manner as the vacating member was appointed. Lists of names
26 shall be submitted by the President pro tempore of the Senate,
27 the Speaker of the House of Representatives, the Minority Leader
28 of the Senate and the Minority Leader of the House of
29 Representatives, as appropriate, within 60 days after the
30 occurrence of a vacancy or the end of the term of a commissioner

1 for whom any of them submit names to the Governor. If a list is
2 not submitted within the 60-day period, the Governor shall make
3 the appointment without regard to the receipt of a list of
4 names. No commissioner shall hold a public office or public
5 appointment, compensated or uncompensated, nor shall a
6 commissioner hold office in any political party or political
7 organization.

8 (e) All commissioners shall be reimbursed for expenses
9 necessarily incurred in the discharge of their official duties.

10 (f) The commission shall establish its own rules of
11 procedure. Materials filed with the commission shall not be
12 public information, and all proceedings of the commission shall
13 be confidential.

14 (g) Whenever a vacancy occurs in the office of justice or
15 judge of the Superior Court or the Commonwealth Court, the
16 commission shall publicly advertise such vacancy and solicit
17 applications. When it is known that a vacancy on the Supreme
18 Court, the Superior Court or the Commonwealth Court will occur
19 in the future on a date certain, the selection process may begin
20 90 days prior to that date. From the applications received AND <—

21 PUBLISHED BY THE DEPARTMENT OF STATE the commission shall
22 prepare and submit to the Governor a list of five persons who
23 are qualified to hold that judicial office. Each person
24 recommended to the Governor shall, for an aggregate of ten
25 years, have either practiced law or served as judge of a court
26 or courts of record in this Commonwealth or AS A LICENSED MEMBER <—
27 OF THE BAR OF THE SUPREME COURT IN GOOD STANDING have been
28 engaged in a law-related occupation and shall be a person of
29 demonstrated competence, judgment and integrity. The list shall
30 be submitted to the Governor no later than 60 days after the

vacancy occurs. When more than one vacancy on the same court exists, the number of persons on the list which is submitted to the Governor shall be increased by two persons for each additional vacancy. Immediately following submission to the Governor, the list shall be filed with the Senate and made public by the commission.

(h) The list submitted to the Governor shall contain the names of those persons who received affirmative votes from three quarters or more of the commissioners then serving, provided that the number of persons shall not exceed the limitations imposed by subsection (g). When voting on applicants, the commissioners shall first consider each applicant's qualifications and shall next consider that each appellate court should include both men and women as well as justices or judges who come from racially and ethnically diverse backgrounds and who reflect the geographical diversity of this Commonwealth.

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

(a) [The] Except as provided in section 13(f), 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 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(a) or section 13(b) or retained under this section 15(b) or a judge elected under section 13(c) or retained under this section 15(b) may file a declaration of candidacy for retention election with the officer of the Commonwealth who

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

24 (3) That section 23 of the Schedule to Article V be amended
25 to read:

26 § 23. Judicial [Qualifications] Nominating Commission.

27 [The selection of the first members of the Judicial
28 Qualifications Commission provided for in section 14 (a) of this
29 article shall be made as follows: The Governor shall appoint the
30 four non-lawyer members for terms of, respectively, one year,

1 three years, five years and seven years, no more than two of
2 whom shall be members of the same political party. The Supreme
3 Court shall appoint the three non-judge members of the bar of
4 the Supreme Court of Pennsylvania for terms, respectively, of
5 two years, four years and six years, no more than two of whom
6 shall be members of the same political party.] Of the members
7 initially appointed to the Judicial Nominating Commission, the
8 non-judge members of the bar of the Supreme Court appointed from
9 the lists submitted by the President pro tempore of the Senate,
10 the Speaker of the House of Representatives and the Minority
11 Leader of the Senate shall serve for one-year terms; the non-
12 judge member of the bar of the Supreme Court appointed from the
13 lists submitted by the Minority Leader of the House of
14 Representatives, the non-lawyer electors appointed from the
15 lists submitted by the President pro tempore of the Senate and
16 the Speaker of the House of Representatives shall serve for two-
17 year terms; the non-lawyer electors appointed from the lists
18 submitted by the Minority Leader of the Senate and the Minority
19 Leader of the House of Representatives and one other non-judge
20 member of the bar of the Supreme Court appointed by the Governor
21 shall serve for three-year terms; the other non-judge member of
22 the bar of the Supreme Court appointed by the Governor and the
23 two other non-lawyer electors appointed by the Governor shall be
24 appointed for four-year terms.

25 Section 2. Upon passage by the General Assembly of these
26 proposed constitutional amendments, the Secretary of the
27 Commonwealth shall proceed immediately to comply with the
28 advertising requirements of section 1 of Article XI of the
29 Constitution of Pennsylvania and shall transmit the required
30 advertisements to two newspapers in every county in which such

1 newspapers shall be published in sufficient time after passage
2 of these proposed constitutional amendments. Upon the second
3 passage of these proposed constitutional amendments by the
4 General Assembly, the Secretary of the Commonwealth shall
5 proceed immediately to comply with the advertising requirements
6 of section 1 of Article XI of the Constitution of Pennsylvania
7 and shall transmit the required advertisements to two newspapers
8 in every county in which such newspapers shall be published in
9 sufficient time after passage of these proposed constitutional
10 amendments. The Secretary of the Commonwealth shall submit these
11 proposed constitutional amendments to the qualified electors of
12 this Commonwealth at the first primary, general or municipal
13 election occurring at least three months after these proposed
14 constitutional amendments are passed by the General Assembly
15 which meets the requirements of and is in conformance with
16 section 1 of Article XI of the Constitution of Pennsylvania.