

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

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 4, 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 (1) That sections 13, 14 and 15 of Article V be amended to <—
9 read:

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

12 (a) Justices of the Supreme Court and judges of the Superior
13 Court and the Commonwealth Court shall be appointed to their

14 initial term by the Governor, with the advice and consent of a <—

15 majority TWO-THIRDS of the members elected to the Senate. Within <—

1 45 days, but after 30 days of the date on which he first
2 receives the list of recommendations from the Judicial
3 Nominating Commission, the Governor shall nominate from the list
4 one person for each vacancy with respect to which the list of
5 recommendations has been submitted. The Senate shall act on each
6 nomination within 45 days of its submission. If the nomination
7 is made during a recess or after adjournment sine die, the
8 Senate shall act upon it within 45 days after its return or
9 reconvening. If the Senate fails to act upon a nomination
10 submitted to it within the required 45 days, the nominee shall
11 take office as if the Senate had consented to the nominee.

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

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

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

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

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

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

29 (e)] (f) Each justice of the Supreme Court or judge of the
30 Superior Court or the Commonwealth Court appointed by the

1 Governor under section [13(d)] 13(a) or section 13(b) shall hold
2 office for an initial term of four years ending the first Monday
3 of January following the next municipal election more than [24]
4 48 months following the appointment.

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

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

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

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

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

30 (b) The commission shall consist of 16 Pennsylvania

1 residents, of whom eight shall be appointed by the Governor and
2 two each shall be appointed by the President pro tempore of the
3 Senate, the Speaker of the House of Representatives, the Senate
4 Minority Leader and the House Minority Leader. Of the eight
5 members appointed by the Governor, only four shall be members of
6 the bar of the Supreme Court, and no more than four shall be
7 enrolled in the same political party. ~~One~~ NOT MORE THAN ONE of <—
8 the two members appointed by the President pro tempore of the
9 Senate, the Speaker of the House of Representatives, the Senate
10 Minority Leader and the House Minority Leader shall be a member
11 of the bar of the Supreme Court.

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

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

for the balance of the term in the same manner that the vacating member was appointed. During his term of service, no commissioner shall hold a public office or public appointment, compensated or uncompensated, nor shall he hold office in any political party or political organization.

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

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

~~(g)~~ (F) 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 advertise such vacancy and solicit applications. From the applications received, the commission shall prepare and submit to the Governor a list of at least five but not more than seven persons who are qualified to hold that judicial office. Each person recommended to the Governor shall, for an aggregate of ten years, have either practiced law or served as judge of a court or courts of record in Pennsylvania or have been engaged in a law-related occupation. The list shall be submitted to the Governor no later than 90 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.

~~(h)~~ (G) The list submitted to the Governor shall contain the names of those persons who received affirmative votes from ten

or more commissioners, provided that the number of persons shall
not exceed the limitations imposed by subsection (g) (F).

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~~Immediately following submission of the list to the Governor,~~
~~the commission shall make public both the list and a statement~~
~~concerning each person recommended to the Governor.~~

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

~~(j) The General Assembly shall appropriate adequate funds to~~
~~the commission to provide for an adequate staff and fulfillment~~
~~of the commission's responsibilities. THE LIST SHALL BE MADE~~
~~PUBLIC BY THE COMMISSION.~~

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

(a) 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

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

26 (2) THAT ARTICLE V BE AMENDED BY ADDING A SECTION TO READ: <—

27 § 19. APPOINTMENT OF JUSTICES AND JUDGES OF APPELLATE COURTS.

28 AN INDIVIDUAL NOMINATED AS A JUSTICE OF THE SUPREME COURT, A
29 JUDGE OF THE SUPERIOR COURT OR A JUDGE OF THE COMMONWEALTH COURT
30 WHO DOES NOT RECEIVE A CONFIRMATION VOTE OF TWO-THIRDS OF THE

1 MEMBERS ELECTED TO THE SENATE SHALL NOT THEREAFTER BE APPOINTED
2 BY THE GOVERNOR TO THE SAME COURT DURING THE ONE-YEAR PERIOD
3 FOLLOWING THE VOTE OF THE SENATE.

4 Section 2. Section 1 shall be submitted by the Secretary of
5 the Commonwealth at the general or municipal election next held
6 after the advertising requirements of section 1 of Article XI of
7 the Constitution of Pennsylvania have been satisfied.