
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 100 Session of
2005

INTRODUCED BY FUMO, A. WILLIAMS, KITCHEN AND STACK,
JULY 25, 2005

REFERRED TO JUDICIARY, JULY 25, 2005

A JOINT RESOLUTION

1 Proposing integrated amendments to the Constitution of the
2 Commonwealth of Pennsylvania, changing and adding provisions
3 relating to 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 section 8(b) of Article IV be amended and the
9 section be amended by adding a subsection to read:

10 § 8. Appointing power.

11 * * *

12 (b) The Governor shall fill vacancies in offices to which he
13 appoints, including appointments made pursuant to Article V, 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

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

23 * * *

24 (d) An individual nominated as a judge for the court of
25 common pleas in the City of Philadelphia or a judge of the
26 municipal court of the City of Philadelphia who does not receive
27 a confirmation vote of two-thirds of the members elected to the
28 Senate shall not thereafter be nominated by the Governor to the
29 same court during the one-year period following the vote of the
30 Senate.

(2) That sections 12(a), 13, 14 and 15 of Article V be amended to read:

§ 12. Qualifications of justices, judges and justices of the peace.

(a) Justices, judges and justices of the peace shall be citizens of [the] this Commonwealth. Justices and judges, except the judges of the traffic court in the City of Philadelphia, shall be members of the bar of the Supreme Court. Justices and judges of statewide courts, for a period of one year preceding their [election or] appointment and during their continuance in office, shall reside within [the] this Commonwealth. Other judges and justices of the peace, for a period of one year preceding their election or appointment and during their continuance in office, shall reside within their respective districts, except as provided in this article for temporary assignments.

* * *

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

[(a) Justices, judges]

(a) If a majority of those voting on the question throughout this Commonwealth and a majority of those voting on the question within the City of Philadelphia approve this method of judicial selection, then judges of the court of common pleas within the City of Philadelphia and judges of the municipal court of the City of Philadelphia shall be appointed to their initial term by the Governor, with the advice and consent of two-thirds of the members elected to the Senate. The Governor shall nominate from a list of at least three persons for each vacancy submitted by the Philadelphia Judicial Nominating Commission one person for

1 each vacancy with respect to which the list of recommendations
2 has been submitted. The appointments shall be made in accordance
3 with the provisions of section 8 of Article IV.

4 (b) If a majority of those voting on the question throughout
5 this Commonwealth and a majority of those voting on the question
6 within the City of Philadelphia approve the appointive system of
7 choosing judges as provided in section 13(a), then a vacancy in
8 the office of judge of the court of common pleas within the City
9 of Philadelphia and the office of judge of the municipal court
10 of the City of Philadelphia shall be filled by the procedure
11 provided in section 13(a). If a majority of those voting on the
12 question throughout this Commonwealth or a majority of those
13 voting on the question within the City of Philadelphia
14 disapprove the appointive system for choosing judges as provided
15 in section 13(a), then judges of the court of common pleas
16 within the City of Philadelphia and judges of the municipal
17 court of the City of Philadelphia shall be elected as provided
18 in section 13(c) for judges other than judges of the court of
19 common pleas within the City of Philadelphia and judges of the
20 municipal court of the City of Philadelphia; and vacancies in
21 the office of judge of the court of common pleas within the City
22 of Philadelphia and judge of the municipal court of the City of
23 Philadelphia shall be filled as provided in section 13(d) for
24 judges other than judges of the court of common pleas within the
25 City of Philadelphia and judges of the municipal court of the
26 City of Philadelphia.

27 (c) Judges, other than judges of the court of common pleas
28 within the City of Philadelphia and judges of the municipal
29 court of the City of Philadelphia, and justices of the peace
30 shall be elected at the municipal election next preceding the

1 commencement of their respective terms of office by the electors
2 of the [Commonwealth or the] respective districts in which they
3 are to serve.

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

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

1 [(d) At the primary election in 1969, the electors of the
2 Commonwealth may elect to have the justices and judges of the
3 Supreme, Superior, Commonwealth and all other statewide courts
4 appointed by the Governor from a list of persons qualified for
5 the offices submitted to him by the Judicial Qualifications
6 Commission. If a majority vote of those voting on the question
7 is in favor of this method of appointment, then whenever any
8 vacancy occurs thereafter for any reason in such court, the
9 Governor shall fill the vacancy by appointment in the manner
10 prescribed in this subsection. Such appointment shall not
11 require the consent of the Senate.

12 (e)] (f) Each [justice or] judge of the court of common
13 pleas within the City of Philadelphia or judge of the municipal
14 court of the City of Philadelphia appointed by the Governor
15 under section [13(d)] 13(a) shall hold office for an initial
16 term of four years ending the first Monday of January following
17 the next municipal election more than [24] 48 months following
18 the appointment.

19 § 14. [Judicial Qualifications] Philadelphia Judicial
20 Nominating Commission.

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

1 vacancy to be filled.

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

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

7 (a) If a majority of those voting on the question throughout
8 this Commonwealth and a majority of those voting on the question
9 within the City of Philadelphia approve the appointive system of
10 choosing judges as provided in section 13(a), then there shall
11 be a Philadelphia Judicial Nominating Commission which shall
12 evaluate the qualifications of applicants for appointment to the
13 office of judge of the court of common pleas in the City of
14 Philadelphia and the office of municipal court of the City of
15 Philadelphia. The commission should include men and women from
16 civic, labor and business communities and should reflect the
17 geographical, political, economic, ethnic and racial diversity
18 of the City of Philadelphia.

19 (b) (1) The commission shall consist of City of
20 Philadelphia residents as follows:

21 (i) One appointed by the District Attorney of the City of
22 Philadelphia.

23 (ii) One appointed by the Chief Public Defender of the City
24 of Philadelphia.

25 (iii) Three appointed by the Philadelphia bar association
26 with the largest membership.

27 (iv) Four appointed by the Governor.

28 (v) Two appointed by the President pro tempore of the
29 Senate.

30 (vi) Two appointed by the Minority Leader of the Senate.

1 (vii) Three appointed by the chairman of the county
2 political party with the most registered voters residing in the
3 City of Philadelphia.

4 (viii) Three appointed by the chairman of the county
5 political party with the second most registered voters residing
6 in the City of Philadelphia.

7 (2) Of the four members appointed by the Governor, no more
8 than two shall be of the same political party, and no more than
9 two shall be members of the bar of the Supreme Court. Not more
10 than one of the two members appointed by the President pro
11 tempore of the Senate and the Minority Leader of the Senate
12 shall be a member of the bar of the Supreme Court.

13 (c) Each commissioner shall be appointed for a full four-
14 year term, except as provided for initial commissioners. The
15 initial commissioners shall serve terms as follows:

16 (1) The commissioner appointed by the District Attorney of
17 the City of Philadelphia, two years.

18 (2) The commissioner appointed by the Chief Public Defender
19 of the City of Philadelphia, four years.

20 (3) The commissioner appointed by the Philadelphia bar
21 association, two years.

22 (4) The commissioners appointed by the Governor, one for one
23 year, one for two years, one for three years and one for four
24 years.

25 (5) The commissioners appointed by the President pro tempore
26 of the Senate, one for four years and one for one year.

27 (6) The commissioners appointed by the Minority Leader of
28 the Senate, one for three years and one for two years.

29 (7) The commissioners appointed by the chairman of the
30 county political parties of the City of Philadelphia, one for

1 two years, one for three years and one for four years, each.

2 (d) The Governor shall designate one of the commissioners as
3 chairman of the commission.

4 (e) No commissioner shall be appointed to more than two
5 successive full four-terms. An appointment to fill an unexpired
6 term which has less than two years to run shall not be deemed a
7 full term. A vacancy in the office of an elected commissioner
8 shall be filled by the first alternate for the unexpired portion
9 of the term. Other vacancies shall be filled by the respective
10 appointing authority for the unexpired portion of the term.

11 During his term of service, no appointed commissioner shall hold
12 a public office or public appointment, compensated or
13 uncompensated, nor shall he hold office in any political party
14 or political organization.

15 (f) Funds for the operation of the commission shall be
16 appropriated by the General Assembly as provided by law.

17 (g) The commission shall establish its own rules of
18 procedure, as provided by law.

19 (h) Whenever a vacancy occurs in the office of judge of the
20 court of common pleas or judge of the municipal court, the
21 commission shall publicly advertise such vacancy and solicit
22 applications. When it is known that a vacancy on the court will
23 occur in the future on a date certain, the selection process may
24 begin 90 days prior to that date. From the applications
25 received, the commission shall prepare and submit to the
26 Governor a list of at least three, but not more than five,
27 persons who are deemed most qualified to hold that judicial
28 office. Only one list may be submitted by the commission for
29 each vacancy. In the event of the death or withdrawal of a
30 person on the commission's list, the commission may substitute a

1 replacement. The list shall be submitted to the Governor no
2 later than 60 days after the vacancy occurs. When more than one
3 vacancy on the same court exists, the number of persons on the
4 list which is submitted to the Governor shall be increased by
5 two persons for each additional vacancy.

6 (i) The list submitted to the Governor shall contain the
7 names of those persons who received affirmative votes from 12 or
8 more commissioners, provided that the number of persons shall
9 not exceed the limitations imposed by subsection (h).

10 Immediately following submission to the Governor, the list shall
11 be made public by the commission.

12 (j) In addition to such other requirements as may be
13 provided by law, no applicant shall be considered by the
14 commission unless the applicant is a member in good standing of
15 the bar of the Supreme Court, has demonstrated professional
16 competence, judgment and integrity, and, in the case of an
17 applicant for judge of the court of common pleas within the City
18 of Philadelphia, has actively engaged in the practice or
19 teaching of law for an aggregate of at least ten years prior to
20 the time of application and, in the case of an applicant for
21 judge of the municipal court of the City of Philadelphia, has
22 actively engaged in the practice or teaching of law for an
23 aggregate of at least five years prior to the time of
24 application.

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

26 (a) [The] Except as provided in section 13(f), the regular
27 term of office of justices and judges shall be ten years and the
28 regular term of office for judges of the municipal court and
29 traffic court in the City of Philadelphia and of justices of the
30 peace shall be six years. The tenure of any justice or judge

1 shall not be affected by changes in judicial districts or by
2 reduction in the number of judges.

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

30 Section 2. (a) Upon the first passage by the General

1 Assembly of these proposed constitutional amendments, the
2 Secretary of the Commonwealth shall proceed immediately to
3 comply with the advertising requirements of section 1 of Article
4 XI of the Constitution of Pennsylvania and shall transmit the
5 required advertisements to two newspapers in every county in
6 which such newspapers are published in sufficient time after
7 passage of these proposed constitutional amendments.

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