

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 1815 Session of  
2011

---

INTRODUCED BY CUTLER, CREIGHTON, EVERETT, MARSICO, MILNE, MOUL,  
MULLERY, MUNDY, MURT, PAYTON, QUINN, ROSS AND SCHRODER,  
AUGUST 22, 2011

---

REFERRED TO COMMITTEE ON JUDICIARY, AUGUST 22, 2011

---

A JOINT RESOLUTION

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

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

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

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

10 § 8. Appointing power.

11 \* \* \*

12 (b) [The] Except as provided in Article V, the Governor  
13 shall fill vacancies in offices to which he appoints 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  
18 not voted upon a nomination within 15 legislative days following

1 such submission, any five members of the Senate may, in writing,  
2 request the presiding officer of the Senate to place the  
3 nomination before the entire Senate body whereby the nomination  
4 must be voted upon prior to the expiration of five legislative  
5 days or 25 legislative days following submission by the  
6 Governor, whichever occurs first. If the nomination is made  
7 during a recess or after adjournment sine die, the Senate shall  
8 act upon it within 25 legislative days after its return or  
9 reconvening. If the Senate for any reason fails to act upon a  
10 nomination submitted to it within the required 25 legislative  
11 days, the nominee shall take office as if the appointment had  
12 been consented to by the Senate. [The] Except as provided in  
13 Article V, the Governor shall in a similar manner fill vacancies  
14 in the offices of Auditor General, State Treasurer, [justice,  
15 judge, justice of the peace] judge, magisterial district judge  
16 and in any other elective office he is authorized to fill. In  
17 the case of a vacancy in an elective office, a person shall be  
18 elected to the office on the next election day appropriate to  
19 the office unless the first day of the vacancy is within two  
20 calendar months immediately preceding the election day in which  
21 case the election shall be held on the second succeeding  
22 election day appropriate to the office.

23 \* \* \*

24 (2) That section 13 of Article V be amended to read:

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

27 (a) [Justices, judges] Judges, other than judges of the  
28 Superior Court and the Commonwealth Court, and [justices of the  
29 peace] magisterial district judges shall be elected at the  
30 municipal election next preceding the commencement of their

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

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

21 (b.1) (1) The Governor shall appoint each justice of the  
22 Supreme Court and judge of the Superior Court and the  
23 Commonwealth Court to the initial term of that justice or judge.  
24 The Governor shall nominate to the Senate individuals for  
25 appointment exclusively from the list of individuals recommended  
26 for appointment by the Appellate Court Nominating Commission  
27 described under section 14(a), and the appointment shall be with  
28 the advice and consent of a majority of the members elected to  
29 the Senate. Within 30 days after receiving a list of  
30 recommendations from the commission, the Governor shall nominate

1 to the Senate one person from the list to fill the vacancy for  
2 which the list was submitted. The Senate shall act on each  
3 nomination of a justice of the Supreme Court or judge of the  
4 Superior Court and the Commonwealth Court within 15 legislative  
5 days after receiving the nomination from the Governor and shall  
6 notify the Governor of the action it took within 24 hours of  
7 taking it. If the nomination is made during a recess or after  
8 adjournment sine die, the Senate shall act upon it within 15  
9 legislative days after its return or reconvening and notify the  
10 Governor as provided in this subsection.

11 (2) If the Senate fails to act upon a nomination submitted  
12 to it within the required number of legislative days after  
13 submission by the Governor, the nominee shall take office as if  
14 the appointment had been consented to by the Senate. The  
15 Governor shall make a substitute nomination from the  
16 commission's list within 30 days after receiving notification  
17 from the Senate of the rejection of a prior nominee, and the  
18 Senate shall act upon the nomination in the manner prescribed in  
19 this subsection. If the Senate rejects a total of three  
20 nominations made for a specific vacancy, the commission shall  
21 appoint any other person on the list and the appointee shall  
22 take office upon notification of the appointment by the  
23 commission and neither the Governor nor the Senate shall  
24 participate further in the appointment process for that vacancy.

25 (b.2) A vacancy in the office of justice of the Supreme  
26 Court or judge of the Superior Court or the Commonwealth Court  
27 shall be filled by the procedure provided in section 13(b.1)(1).  
28 Additional judges to the Superior Court or the Commonwealth  
29 Court shall be selected as provided in section 13(b.1)(1).

30 (c) The provisions of section 13(b) and (b.2) shall not

1 apply [either] in the case of a vacancy to be filled by  
2 retention election as provided in section 15(b) [, or]. Section  
3 13(b) shall not apply in the case of a vacancy created by  
4 failure of a [justice or] judge to file a declaration for  
5 retention election as provided in section 15(b). In the case of  
6 a vacancy occurring at the expiration of an appointive term  
7 under section 13(b), the vacancy shall be filled by election as  
8 provided in section 13(a).

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

20 (e) Each justice or judge of the Superior Court or the  
21 Commonwealth Court appointed by the Governor under section  
22 [13(d)] 13(b.1) or (b.2) shall hold office for an initial term  
23 ending the first Monday of January following the next municipal  
24 election more than [24] 48 months following the appointment.

25 (3) That section 14 of Article V be amended to read:  
26 § 14. [Judicial Qualifications] Appellate Court Nominating  
27 Commission.

28 [(a) Should the method of judicial selection be adopted as  
29 provided in section 13 (d), there shall be a Judicial  
30 Qualifications Commission, composed of four non-lawyer electors

1 appointed by the Governor and three non-judge members of the bar  
2 of the Supreme Court appointed by the Supreme Court. No more  
3 than four members shall be of the same political party. The  
4 members of the commission shall serve for terms of seven years,  
5 with one member being selected each year. The commission shall  
6 consider all names submitted to it and recommend to the Governor  
7 not fewer than ten nor more than 20 of those qualified for each  
8 vacancy to be filled.

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

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

14 (a) There shall be established an independent commission  
15 within the Executive Department known as the Appellate Court  
16 Nominating Commission. The commission shall consist of 15  
17 Pennsylvania residents who are 18 years of age or older. Seven  
18 members shall be public members who shall be selected as  
19 provided by law. Four members shall be appointed by the Governor  
20 and four members shall be appointed by the General Assembly. The  
21 members appointed by the General Assembly shall be appointed as  
22 follows: one each shall be appointed by the President pro  
23 tempore of the Senate, the Minority Leader of the Senate, the  
24 Speaker of the House of Representatives and the Minority Leader  
25 of the House of Representatives.

26 (b) The General Assembly shall provide for the nomination of  
27 public members by groups located in Pennsylvania, including bar  
28 associations, civic groups, public safety groups, unions,  
29 business organizations, deans of law schools and other  
30 professional associations of individuals who are not lawyers,

1 and shall further provide for the selection of public members  
2 from individuals nominated by those groups. No one holding  
3 elective or appointive public office, or designees or appointees  
4 of anyone holding elective or appointive public office, shall  
5 participate in the nomination or appointment of public members,  
6 except that the Secretary of the Commonwealth may be designated  
7 to facilitate the process of nominating and appointing public  
8 members.

9 (c) (1) Each of the members appointed by the General  
10 Assembly shall be members of the bar of the Supreme Court who  
11 are not justices, judges or magisterial district judges. The  
12 members appointed under this paragraph shall be residents of at  
13 least four different counties at the time of appointment and  
14 during their terms. If a member becomes a resident of a county  
15 of that of another member appointed by the General Assembly, the  
16 member shall forfeit his or her membership and the General  
17 Assembly shall appoint another member under this section.

18 (2) The members appointed by the Governor shall not be  
19 attorneys licensed to practice law in any state and shall not be  
20 justices, judges or magisterial district judges. The members  
21 appointed under this paragraph shall be residents of at least  
22 four different counties at the time of appointment and during  
23 their terms. If a member becomes a resident of a county of that  
24 of another member appointed by the Governor, the member shall  
25 forfeit his or her membership and the Governor shall appoint  
26 another member under this section. No more than two of the  
27 members appointed by the Governor shall be registered in the  
28 same political party.

29 (d) Each member of the commission shall have been a resident  
30 of this Commonwealth for one year prior to that member's

1 appointment and shall reside in this Commonwealth during that  
2 member's term. In making appointments to the commission, each  
3 nominating or appointing authority shall take into consideration  
4 that the commission should include men and women as well as  
5 individuals who come from racially and ethnically diverse  
6 backgrounds and who reflect the geographic diversity of this  
7 Commonwealth.

8 (e) Except for the initial members of the commission, whose  
9 terms shall be provided by law, each member shall be appointed  
10 for a four-year term. Each member shall serve only until the end  
11 of that member's term. A member who has served a full term shall  
12 not be permitted to serve on the commission until four years  
13 have elapsed from the end of that member's term. An appointment  
14 of two years or less, whether by initial appointment or by  
15 appointment to fill an unexpired term, shall not be deemed a  
16 full term. A vacancy shall be filled for the remainder of the  
17 term to which the member was appointed in the same manner as the  
18 vacating member was appointed, except that the General Assembly  
19 may provide for a different manner for filling the vacancy of a  
20 public member.

21 (f) No member, during the member's term, shall hold office  
22 in any political party or political organization or hold elected  
23 or appointed public office, compensated or uncompensated, except  
24 that members may serve as part-time solicitors to political  
25 subdivisions. Neither any employee of the unified judicial  
26 system nor any lobbyist shall be eligible for appointment to the  
27 commission. Members shall not be compensated for their services  
28 as members of the commission, but shall be reimbursed for  
29 expenses necessarily incurred in the discharge of their official  
30 duties in accordance with Commonwealth policy in effect for the



1 Executive Department. Members of the General Assembly shall not  
2 be eligible for appointment to the commission for a period of  
3 one year following their service in the General Assembly.  
4 Members of the Judiciary shall not be eligible for appointment  
5 to the commission for a period of one year following their  
6 service on the Judiciary. Governors and Lieutenant Governors  
7 shall not be eligible for appointment to the commission for a  
8 period of one year following their service as Governor or  
9 Lieutenant Governor.

10 (g) The General Assembly may provide for additional  
11 qualifications of members of the commission, not inconsistent  
12 with this article, as it deems appropriate in furthering the  
13 purposes of this article.

14 (h) Whenever a vacancy occurs in the office of justice of  
15 the Supreme Court or judge of the Superior Court or the  
16 Commonwealth Court, the commission shall publicly announce the  
17 vacancy and solicit applications. When it is known that a  
18 vacancy on the Supreme Court, the Superior Court or the  
19 Commonwealth Court will occur in the future on a date certain,  
20 the selection process shall begin no later than 90 days prior to  
21 that date. From the applications received, the commission shall  
22 agree, by the affirmative votes from at least eight of the  
23 members, on a list of five individuals most qualified to hold  
24 the office and shall submit the list to the Governor. Only one  
25 list may be supplied by the commission for each vacancy. In  
26 making their selection, the members shall consider each  
27 applicant's qualifications and each person whose name is  
28 submitted to the Governor shall:

29 (i) be a licensed member of the bar of the Supreme Court in  
30 good standing;

1 (ii) have practiced law, served as a judge of a Federal  
2 court, served on a court or courts of record of this  
3 Commonwealth or been engaged in a law-related occupation for an  
4 aggregate of at least ten years prior to the date of the  
5 nomination; and

6 (iii) have demonstrated integrity, judicial temperament,  
7 professional competence and experience and commitment to the  
8 community.

9 The commission shall consider that each of the appellate courts  
10 should include both men and women who come from racially and  
11 ethnically diverse backgrounds and who reflect the geographic  
12 diversity of this Commonwealth.

13 (i) The General Assembly may provide for other procedural  
14 provisions relating to the nomination of justices and judges,  
15 not inconsistent with this article, as it may deem necessary to  
16 carry out the purposes of this article.

17 (j) The commission shall be provided with staff and its  
18 budget administered as provided by law. The budget request for  
19 the commission shall be made as a separate item in the  
20 Governor's budget submitted pursuant to section 12(a) of Article  
21 VII.

22 (4) That section 15 of Article V be amended to read:  
23 § 15. Tenure of justices, judges and [justices of the peace]  
24 magisterial district judges.

25 (a) [The] Except as provided in section 13(e), the regular  
26 term of office of justices and judges shall be ten years and the  
27 regular term of office for judges of the municipal court and  
28 traffic court in the City of Philadelphia and of [justices of  
29 the peace] magisterial district judges shall be six years. The  
30 tenure of any justice or judge shall not be affected by changes

1 in judicial districts or by reduction in the number of judges.

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

1 article.

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

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