
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 843 Session of
2011

INTRODUCED BY EARLL, ERICKSON, FONTANA, PICCOLA, M. WHITE AND
LEACH, MARCH 15, 2011

REFERRED TO JUDICIARY, MARCH 15, 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 of justices,] Selection of judges and [justices
26 of 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) The Governor shall appoint each justice of the Supreme
22 Court and judge of the Superior Court and the Commonwealth Court
23 to the initial term of that justice or judge. The Governor shall
24 nominate to the Senate individuals for appointment exclusively
25 from the list of individuals recommended for appointment by the
26 Appellate Court Nominating Commission described under section
27 14(a), and the appointment shall be with the advice and consent
28 of a majority of the members elected to the Senate. Within 30
29 days after receiving a list of recommendations from the
30 commission, the Governor shall nominate to the Senate one person

1 from the list to fill the vacancy for which the list was
2 submitted. The Senate shall act on each nomination of a justice
3 of the Supreme Court or judge of the Superior Court and the
4 Commonwealth Court within 15 legislative days after receiving
5 the nomination from the Governor and shall notify the Governor
6 of the action it took within 24 hours of taking it. If the
7 nomination is made during a recess or after adjournment sine
8 die, the Senate shall act upon it within 15 legislative days
9 after its return or reconvening and notify the Governor as
10 provided in this subsection. If the Senate for any reason fails
11 to act upon a nomination submitted to it within the required
12 number of days after submission by the Governor, the nominee
13 shall take office as if the appointment had been consented to by
14 the Senate. The Governor shall make a substitute nomination from
15 the commission's list within 30 days after receiving
16 notification from the Senate of the rejection of a prior
17 nominee, and the Senate shall act upon the nomination in the
18 manner prescribed in this subsection. If the Senate rejects a
19 total of three nominations made for a specific vacancy, the
20 commission shall appoint any other person on the list and the
21 appointee shall take office upon notification of the appointment
22 by the commission and neither the Governor nor the Senate shall
23 participate further in the appointment process for that vacancy.

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

29 (c) The provisions of section 13(b) and (b.2) shall not
30 apply [either] in the case of a vacancy to be filled by

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

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

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

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

27 [(a) Should the method of judicial selection be adopted as
28 provided in section 13 (d), there shall be a Judicial
29 Qualifications Commission, composed of four non-lawyer electors
30 appointed by the Governor and three non-judge members of the bar

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

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

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

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

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

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

8 (c) Two of the members appointed by the Governor shall be
9 lawyers who are licensed to practice law by the Supreme Court
10 and who are not justices, judges or magisterial district judges.
11 The other two members appointed by the Governor shall not be
12 attorneys licensed to practice law by the Supreme Court and
13 shall not be justices, judges or magisterial district judges.
14 The members appointed by the Governor shall be residents of at
15 least four different counties. No more than two of the members
16 appointed by the Governor shall be registered in the same
17 political party.

18 (d) Each member of the commission shall have been a resident
19 of this Commonwealth for one year prior to that member's
20 appointment and shall reside in this Commonwealth during that
21 member's term. In making appointments to the commission, each
22 nominating or appointing authority shall take into consideration
23 that the commission should include men and women as well as
24 individuals from the civic, labor and business communities and
25 individuals who come from racially and ethnically diverse
26 backgrounds and who reflect the geographic diversity of this
27 Commonwealth.

28 (e) Each member shall be appointed for a four-year term,
29 except that the initial appointments shall have staggered terms
30 as provided by law. Each member shall serve only until the end

1 of that member's term. A member who has served a full term shall
2 not be permitted to serve on the commission during the next
3 succeeding term. An appointment of two years or less, whether by
4 initial appointment or by appointment to fill an unexpired term,
5 shall not be deemed a full term. A vacancy shall be filled for
6 the remainder of the term to which the member was appointed in
7 the same manner as the vacating member was appointed, except
8 that the General Assembly may provide for a different manner for
9 filling the vacancy of a public member.

10 (f) No member, during the member's term, shall hold office
11 in any political party or political organization or hold elected
12 or appointed public office, compensated or uncompensated, except
13 that members may serve as part-time solicitors to units of local
14 government. Neither any employee of the unified judicial system
15 nor any lobbyist shall be eligible for appointment to the
16 commission. Members shall not be compensated for their services
17 as members of the commission, but shall be reimbursed for
18 expenses necessarily incurred in the discharge of their official
19 duties in accordance with Commonwealth policy in effect for the
20 Executive Department.

21 (g) The General Assembly may provide for additional
22 qualifications of members of the commission, not inconsistent
23 with this article, as it deems appropriate in furthering the
24 purposes of this article.

25 (h) The General Assembly shall provide for the manner of
26 operation of the commission, except that the commission shall
27 establish its own rules of procedure and shall be given
28 authority to operate independently consistent with the
29 provisions of this article.

30 (i) Whenever a vacancy occurs in the office of justice of

1 the Supreme Court or judge of the Superior Court or the
2 Commonwealth Court, the commission shall publicly announce the
3 vacancy and solicit applications. When it is known that a
4 vacancy on the Supreme Court, the Superior Court or the
5 Commonwealth Court will occur in the future on a date certain,
6 the selection process shall begin no later than 90 days prior to
7 that date. From the applications received, the commission shall
8 agree, by the affirmative votes from at least eight of the
9 members, on a list of five individuals most qualified to hold
10 the office and shall submit the list to the Governor. Only one
11 list may be supplied by the commission for each vacancy. In
12 making their selection, the members shall consider each
13 applicant's qualifications and each person whose name is
14 submitted to the Governor shall:

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

17 (ii) for an aggregate of at least ten years preceding the
18 person's selection, have either practiced law, served as judge
19 of a court or courts of record in this Commonwealth, served as a
20 judge of a Federal court or been engaged in a law-related
21 occupation; and

22 (iii) have demonstrated integrity, judicial temperament,
23 professional competence and experience and commitment to the
24 community.

25 The commission shall consider that each of the appellate courts
26 should include both men and women who come from racially and
27 ethnically diverse backgrounds and who reflect the geographic
28 diversity of this Commonwealth.

29 (j) The General Assembly may provide for other procedural
30 provisions relating to the nomination of justices and judges,

1 not inconsistent with this article, as it may deem necessary to
2 carry out the purposes of this article.

3 (k) The commission shall be provided with staff and its
4 budget administered as provided by law. The budget request for
5 the commission shall be made by the Governor.

6 (4) That section 15 of Article V be amended to read:

7 § 15. Tenure of justices, judges and [justices of the peace]
8 magisterial district judges.

9 (a) [The] Except as provided in section 13(e), the regular
10 term of office of justices and judges shall be ten years and the
11 regular term of office for judges of the municipal court and
12 traffic court in the City of Philadelphia and of [justices of
13 the peace] magisterial district judges shall be six years. The
14 tenure of any justice or judge shall not be affected by changes
15 in judicial districts or by reduction in the number of judges.

16 (b) A justice or judge [elected under section 13(a),] of the
17 Superior Court or the Commonwealth Court appointed under section
18 [13(d)] 13(b.1) or (b.2) or retained under this section 15(b) or
19 a judge elected under section 13(a) or retained under this
20 section 15(b) may file a declaration of candidacy for retention
21 election with the officer of the Commonwealth who under law
22 shall have supervision over elections on or before the first
23 Monday of January of the year preceding the year in which [his]
24 the term of office of the justice or judge expires. If no
25 declaration is filed, a vacancy shall exist upon the expiration
26 of the term of office of such justice or judge, to be filled by
27 [election under section 13(a) or by appointment under section
28 13(d) if applicable] appointment under section 13(b.1) or by
29 election under section 13(a). If a justice or judge files a
30 declaration, [his name] the name of the justice or judge shall

1 be submitted to the electors without party designation, on a
2 separate judicial ballot or in a separate column on voting
3 machines, at the municipal election immediately preceding the
4 expiration of the term of office of the justice or judge, to
5 determine only the question whether [he] the justice or judge
6 shall be retained in office. If a majority is against retention,
7 a vacancy shall exist upon the expiration of [his] the term of
8 office of that justice or judge, to be filled by appointment
9 under section 13(b) or [under section 13(d) if applicable]
10 (b.2). If a majority favors retention, the justice or judge
11 shall serve for the regular term of office provided herein,
12 unless sooner removed or retired. At the expiration of each term
13 a justice or judge shall be eligible for retention as provided
14 herein, subject only to the retirement provisions of this
15 article.

16 (c) The provisions of subsection (b) shall not apply to
17 magisterial district justices.

18 Section 2. (a) Upon the first passage by the General
19 Assembly of these proposed constitutional amendments, the
20 Secretary of the Commonwealth shall proceed immediately to
21 comply with the advertising requirements of section 1 of Article
22 XI of the Constitution of Pennsylvania and shall transmit the
23 required advertisements to two newspapers in every county in
24 which such newspapers are published in sufficient time after
25 passage of these proposed constitutional amendments.

26 (b) Upon the second passage by the General Assembly of these
27 proposed constitutional amendments, the Secretary of the
28 Commonwealth shall proceed immediately to comply with the
29 advertising requirements of section 1 of Article XI of the
30 Constitution of Pennsylvania and shall transmit the required

1 advertisements to two newspapers in every county in which such
2 newspapers are published in sufficient time after passage of
3 these proposed constitutional amendments. The Secretary of the
4 Commonwealth shall submit the proposed constitutional amendments
5 under section 1 to the qualified electors of this Commonwealth
6 as a single ballot question at the first primary, general or
7 municipal election which meets the requirements of and is in
8 conformance with section 1 of Article XI of the Constitution of
9 Pennsylvania and which occurs at least three months after the
10 proposed constitutional amendments are passed by the General
11 Assembly.