
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1848 Session of
2013

INTRODUCED BY CUTLER, SIMS, DELISSIO, D. MILLER, PAINTER, MUNDY,
ROSS, MURT, AUMENT, FLECK, LAWRENCE, SANTARSIERO, EVANKOVICH,
QUINN, MILNE, MCCARTER, KAMPF, SCHREIBER, VITALI, KIRKLAND,
GALLOWAY, FRANKEL, WHITE, DIGIROLAMO AND DEAN,
NOVEMBER 21, 2013

REFERRED TO COMMITTEE ON JUDICIARY, NOVEMBER 21, 2013

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

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

25 * * *

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

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

29 (a) [Justices, judges] Judges, other than judges of the
30 Superior Court and the Commonwealth Court, and [justices of the

1 peace] magisterial district judges shall be elected at the
2 municipal election next preceding the commencement of their
3 respective terms of office by the electors of the [Commonwealth
4 or the] respective districts in which they are to serve.

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

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

1 the Senate. Within 30 days after receiving a list of
2 recommendations from the commission, the Governor shall nominate
3 to the Senate one person from the list to fill the vacancy for
4 which the list was submitted. The Senate shall act on each
5 nomination of a justice of the Supreme Court or judge of the
6 Superior Court and the Commonwealth Court within 15 legislative
7 days after receiving the nomination from the Governor and shall
8 notify the Governor of the action it took within 24 hours of
9 taking it. If the nomination is made during a recess or after
10 adjournment sine die, the Senate shall act upon it within 15
11 legislative days after its return or reconvening and notify the
12 Governor as provided in this subsection.

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

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

1 Court shall be selected as provided in section 13(b.1)(1).

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

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

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

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

30 [(a) Should the method of judicial selection be adopted as

1 provided in section 13 (d), there shall be a Judicial
2 Qualifications Commission, composed of four non-lawyer electors
3 appointed by the Governor and three non-judge members of the bar
4 of the Supreme Court appointed by the Supreme Court. No more
5 than four members shall be of the same political party. The
6 members of the commission shall serve for terms of seven years,
7 with one member being selected each year. The commission shall
8 consider all names submitted to it and recommend to the Governor
9 not fewer than ten nor more than 20 of those qualified for each
10 vacancy to be filled.

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

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

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

28 (b) The General Assembly shall provide for the nomination of
29 public members by groups located in this Commonwealth. No one
30 holding elective or appointive public office, or designees or

1 appointees of anyone holding elective or appointive public
2 office, may participate in the nomination or appointment of
3 public members, except that the Secretary of the Commonwealth
4 may be designated to facilitate the process of nominating and
5 appointing public members.

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

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

26 (d) Each member of the commission shall have been a resident
27 of this Commonwealth for one year prior to that member's
28 appointment and shall reside in this Commonwealth during that
29 member's term. In making appointments to the commission, each
30 nominating or appointing authority shall take into consideration

1 that the commission should include men and women as well as
2 individuals who come from racially and ethnically diverse
3 backgrounds and who reflect the geographic diversity of this
4 Commonwealth.

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

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

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

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

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

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

28 (ii) have practiced law, served as a judge of a Federal
29 court, served on a court or courts of record of this
30 Commonwealth or been engaged in a law-related occupation for an

1 aggregate of at least ten years prior to the date of the
2 nomination; and
3 (iii) have demonstrated integrity, judicial temperament,
4 professional competence and experience and commitment to the
5 community.

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

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

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

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

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

29 (b) A justice or judge [elected under section 13(a),] of the
30 Superior Court or the Commonwealth Court appointed under section

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

29 Section 2. (a) Upon the first passage by the General
30 Assembly of these proposed constitutional amendments, the

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

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