

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 111 Session of 2017

INTRODUCED BY CUTLER, DEAN, DRISCOLL, KINSEY, MULLERY, GODSHALL, VITALI, MADDEN, LAWRENCE, DAVIS, BRIGGS, ROZZI, ENGLISH, McCLINTON, DeLISSIO, BOYLE, McCARTER, HILL-EVANS, PETRI, COMMITTA, STURLA, FARRY AND SOLOMON, FEBRUARY 28, 2017

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 30, 2018

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

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] Except as provided in
14 Article V, the Governor shall in a similar manner fill vacancies
15 in the offices of Auditor General, State Treasurer, [justice,
16 judge, justice of the peace] judge, magisterial district judge
17 and in any other elective office he is authorized to fill. In
18 the case of a vacancy in an elective office, a person shall be
19 elected to the office on the next election day appropriate to
20 the office unless the first day of the vacancy is within two
21 calendar months immediately preceding the election day in which
22 case the election shall be held on the second succeeding
23 election day appropriate to the office.

24 * * *

25 (2) THAT SECTION 2 OF ARTICLE V BE AMENDED TO READ:

<--

26 § 2. SUPREME COURT.

27 THE SUPREME COURT (A) SHALL BE THE HIGHEST COURT OF THE
28 COMMONWEALTH AND IN THIS COURT SHALL BE REPOSED THE SUPREME
29 JUDICIAL POWER OF THE COMMONWEALTH;

30 (B) SHALL CONSIST OF SEVEN JUSTICES, TO BE SELECTED AS

1 ESTABLISHED BY LAW, ONE OF WHOM SHALL BE THE CHIEF JUSTICE; AND
2 (C) SHALL HAVE SUCH JURISDICTION AS SHALL BE PROVIDED BY
3 LAW.

4 (3) THAT SECTION 3 OF ARTICLE V BE AMENDED TO READ:
5 § 3. SUPERIOR COURT.

6 THE SUPERIOR COURT SHALL BE A STATEWIDE COURT, AND SHALL
7 CONSIST OF [THE NUMBER OF JUDGES, WHICH SHALL BE NOT LESS THAN
8 SEVEN JUDGES] 15 JUDGES, TO BE SELECTED AS ESTABLISHED BY LAW,
9 AND HAVE SUCH JURISDICTION AS SHALL BE PROVIDED BY THIS
10 CONSTITUTION OR BY THE GENERAL ASSEMBLY. ONE OF ITS JUDGES SHALL
11 BE THE PRESIDENT JUDGE.

12 (4) THAT SECTION 4 OF ARTICLE V BE AMENDED TO READ:
13 § 4. COMMONWEALTH COURT.

14 THE COMMONWEALTH COURT SHALL BE A STATEWIDE COURT, AND SHALL
15 CONSIST OF [THE NUMBER OF JUDGES] NINE JUDGES, TO BE SELECTED AS
16 ESTABLISHED BY LAW, AND HAVE SUCH JURISDICTION AS SHALL BE
17 PROVIDED BY LAW. ONE OF ITS JUDGES SHALL BE THE PRESIDENT JUDGE.

18 (5) THAT SECTION 11 OF ARTICLE V BE AMENDED TO READ:
19 § 11. JUDICIAL DISTRICTS; BOUNDARIES.

20 [THE NUMBER AND BOUNDARIES OF JUDICIAL DISTRICTS SHALL BE
21 CHANGED BY THE GENERAL ASSEMBLY ONLY WITH THE ADVICE AND CONSENT
22 OF THE SUPREME COURT.]

23 (A) THE NUMBER OF JUDGES AND JUSTICES OF THE SUPREME COURT,
24 THE SUPERIOR COURT AND THE COMMONWEALTH COURT SELECTED FROM EACH
25 JUDICIAL DISTRICT SHALL PROVIDE EVERY RESIDENT OF THIS
26 COMMONWEALTH WITH APPROXIMATELY EQUAL REPRESENTATION ON A COURT.
27 EACH JUDICIAL DISTRICT SHALL BE COMPOSED OF COMPACT AND
28 CONTIGUOUS TERRITORY AS NEARLY EQUAL IN POPULATION AS
29 PRACTICABLE. UNLESS ABSOLUTELY NECESSARY, NO COUNTY, CITY,
30 INCORPORATED TOWN, BOROUGH, TOWNSHIP OR WARD MAY BE DIVIDED IN

1 FORMING A JUDICIAL DISTRICT.

2 (B) THE GENERAL ASSEMBLY SHALL, BY LAW, ESTABLISH:

3 (1) AN EASTERN, MIDDLE AND WESTERN JUDICIAL DISTRICT FROM
4 WHICH JUSTICES OR JUDGES ARE SELECTED AS FOLLOWS:

5 (I) TWO JUSTICES OF THE SUPREME COURT SHALL BE SELECTED FROM
6 WITHIN EACH JUDICIAL DISTRICT AND SHALL BE RESIDENTS OF THE
7 JUDICIAL DISTRICT. ONE JUSTICE SHALL BE SELECTED ON A STATEWIDE
8 BASIS AND MAY BE A RESIDENT OF ANY OF THE JUDICIAL DISTRICTS.

9 (II) FIVE JUDGES OF THE SUPERIOR COURT SHALL BE SELECTED
10 FROM WITHIN EACH JUDICIAL DISTRICT AND SHALL BE RESIDENTS OF THE
11 JUDICIAL DISTRICT.

12 (III) THREE JUDGES OF THE COMMONWEALTH COURT SHALL BE
13 SELECTED FROM WITHIN EACH JUDICIAL DISTRICT AND SHALL BE
14 RESIDENTS OF THE JUDICIAL DISTRICT.

15 (2) A TRANSITION TO AN APPELLATE COURT JUDICIARY SELECTED
16 FROM JUDICIAL DISTRICTS.

17 (3) THE EFFECT OF SET JUDICIAL DISTRICTS UPON ELIGIBILITY TO
18 SEEK RETENTION.

19 (4) THE ORDER IN WHICH JUSTICES OF THE SUPREME COURT AND
20 JUDGES OF THE SUPERIOR COURT AND THE COMMONWEALTH COURT ARE
21 SELECTED.

22 (5) THE DECENNIAL REALIGNMENT OF THE APPELLATE JUDICIAL
23 DISTRICTS BASED ON THE FEDERAL DECENNIAL CENSUS, BEGINNING IN
24 2021 AND OCCURRING EACH TEN YEARS THEREAFTER.

25 (C) RESIDENCY QUALIFICATION FOR APPOINTMENT TO THE SUPREME
26 COURT, THE SUPERIOR COURT AND THE COMMONWEALTH COURT SHALL BE
27 ESTABLISHED BY THE GENERAL ASSEMBLY.

28 (D) EXCEPT AS PROVIDED UNDER SUBSECTION (B) AND SECTION
29 7(B), THE NUMBER AND BOUNDARIES OF ALL OTHER JUDICIAL DISTRICTS
30 SHALL BE ESTABLISHED BY THE GENERAL ASSEMBLY BY LAW, WITH THE

1 ADVICE AND CONSENT OF THE SUPREME COURT.

2 ~~(2)~~ (6) That section 13 of Article V be amended to read: <--

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

5 (a) [Justices, judges and justices of the peace] Judges,
6 other than judges of the Superior Court and Commonwealth Court,
7 and magisterial district judges shall be elected at the
8 municipal election next preceding the commencement of their
9 respective terms of office by the electors of the [Commonwealth
10 or the] respective districts in which they are to serve.

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

29 (b.1) (1) A vacancy in the office of justice of the Supreme
30 Court, and judge of the Superior Court and Commonwealth Court,

1 shall be filled by appointment by the Governor. The appointment
2 shall be for the initial term of each justice or judge. The
3 Governor shall nominate to the Senate individuals for
4 appointment exclusively from the list of individuals recommended
5 for appointment by the Appellate Court Nominating Commission
6 described under section 14, and the appointment shall be with
7 the advice and consent of two-thirds of the members elected to
8 the Senate. Within 30 days after receiving a list of
9 recommendations from the commission, the Governor shall nominate
10 to the Senate one individual from the list to fill the vacancy
11 for which the list was submitted. The Senate shall act on each
12 such nomination within 25 legislative days following the
13 submission. If the nomination is made during a recess or after
14 adjournment sine die, the Senate shall act upon it within 25
15 legislative days after its return or reconvening. If the Senate
16 has not voted upon a nomination within 15 legislative days
17 following submission of the nomination by the Governor or within
18 15 legislative days after its return or reconvening, any five
19 members of the Senate may, in writing, request the presiding
20 officer of the Senate to place the nomination before the entire
21 Senate body whereby the nomination must be voted upon prior to
22 the expiration of 25 legislative days following submission of
23 the nomination by the Governor or five legislative days
24 following the submission of the request by the members,
25 whichever occurs first. If the Senate fails to act upon a
26 nomination submitted under this paragraph, the nominee shall
27 take office as if the appointment had been consented to by the
28 Senate.

29 (2) If the Senate rejects the appointment of a nominee, the
30 Governor shall make a substitute nomination from the

1 commission's list within 30 days after the rejection from the
2 Senate. The Senate shall act upon the nomination in the manner
3 prescribed in paragraph (1). If the Senate rejects a total of
4 three nominations made for a specific vacancy, the commission
5 shall appoint any other individual on the list, the appointee
6 shall take office upon notification of the appointment by the
7 commission and neither the Governor nor the Senate shall
8 participate further in the appointment process for that vacancy.

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

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

28 (e) Each justice or judge of the Superior Court or
29 Commonwealth Court appointed by the Governor under section
30 [13(d)] 13(b.1) shall hold office for an initial term ending the

1 first Monday of January following the next municipal election
2 more than [24] 48 months following the appointment.

3 ~~(3)~~ (7) That section 14 of Article V be amended to read: <--

4 § 14. [Judicial Qualifications] Appellate Court Nominating
5 Commission.

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

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

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

22 (d) There shall be an independent board within the Executive
23 Department, known as the Appellate Court Nominating Commission,
24 the composition of which shall be as follows:

25 (1) The commission shall be composed of 13 members as
26 follows:

27 (i) Five individuals appointed by the Governor, four of whom
28 shall be members of the bar of the Supreme Court in good
29 standing and one of whom shall not be a member of the bar of the
30 Supreme Court or of any other jurisdiction. The members

1 appointed under this subparagraph shall reside in different
2 counties and no more than three members may be registered in the
3 same political party.

4 (ii) Two individuals appointed by the majority leader of the
5 Senate, one of whom shall be a member of the bar of the Supreme
6 Court in good standing and one of whom shall not be a member of
7 the bar of the Supreme Court or of any other jurisdiction. The
8 members appointed under this subparagraph shall reside in
9 different counties.

10 (iii) Two individuals appointed by the minority leader of
11 the Senate, one of whom shall be a member of the bar of the
12 Supreme Court in good standing and one of whom shall not be a
13 member of the bar of the Supreme Court or of any other
14 jurisdiction. The members appointed under this subparagraph
15 shall reside in different counties.

16 (iv) Two individuals appointed by the majority leader of the
17 House of Representatives, one of whom shall be a member of the
18 bar of the Supreme Court in good standing and one of whom shall
19 not be a member of the bar of the Supreme Court or of any other
20 jurisdiction. The members appointed under this subparagraph
21 shall reside in different counties.

22 (v) Two individuals appointed by the minority leader of the
23 House of Representatives, one of whom shall be a member of the
24 bar of the Supreme Court in good standing and one of whom shall
25 not be a member of the bar of the Supreme Court or of any other
26 jurisdiction. The members appointed under this subparagraph
27 shall reside in different counties.

28 (2) Except for the initial appointees whose terms shall be
29 staggered as provided by law, the members shall serve for terms
30 of four years. Each member must be at least 18 years of age and

1 a resident of this Commonwealth for at least one year
2 immediately prior to the member's appointment and throughout the
3 member's term on the commission.

4 (3) No member of the commission, during the member's term,
5 may hold office in a political party or political organization,
6 hold an appointed or elected public office, whether compensated
7 or uncompensated, or be an employee of the Commonwealth. An
8 individual who has held any of the foregoing positions within
9 one year prior to the individual's appointment shall not be
10 eligible to serve on the commission. The provisions of this
11 paragraph shall not prohibit a member from serving as a part-
12 time solicitor to a political subdivision.

13 (4) Membership on the commission shall terminate if a member
14 attains a position or characteristic that would have rendered
15 the member ineligible for appointment at the time of the
16 appointment. A vacancy shall be filled by the respective
17 appointing authority for the remainder of the term to which the
18 member was appointed. No member may serve for more than one full
19 term but may be reappointed after a lapse of four years. An
20 appointment of two years or less shall not be deemed a full
21 term. When making appointments, appointing authorities shall
22 consider that the commission should reflect the geographic,
23 racial, ethnic, gender and other diversity of this Commonwealth.
24 The General Assembly may provide for additional qualifications
25 of members of the commission, not inconsistent with this
26 section, as it deems appropriate in furthering the purposes of
27 this article.

28 (5) Members shall not be compensated for their services but
29 may be reimbursed for expenses necessarily incurred in the
30 discharge of their official duties.

1 (e) The Governor shall convene the first meeting of the
2 commission. At that meeting and annually thereafter, the members
3 of the commission shall elect a chairperson from among the
4 members. Except as provided in subsection (h), the commission
5 shall act only with the concurrence of a majority of its
6 members.

7 (f) The commission shall prescribe general rules governing
8 the conduct of members. A member may be removed by the
9 commission for a violation of the rules governing the conduct of
10 members.

11 (g) The commission may appoint staff as it deems necessary,
12 prepare and administer its own budget as provided by law,
13 exercise supervisory and administrative authority over staff and
14 commission functions, establish and promulgate its own rules of
15 procedure, prepare and disseminate an annual report and take
16 other actions as are necessary to ensure its efficient
17 operation. The General Assembly may authorize staff of other
18 Commonwealth agencies to assist the commission in the
19 commission's work. The budget request of the commission shall be
20 submitted to the General Assembly by the Governor as a separate
21 item in the budget of the Executive Department.

22 (h) Whenever a vacancy occurs in the office of justice of
23 the Supreme Court or judge of the Superior Court or Commonwealth
24 Court FOR A JUDICIAL DISTRICT ESTABLISHED UNDER SECTION 11, the <--
25 commission shall publicly announce the vacancy and solicit
26 applications for individuals who desire to be considered for the
27 vacancy. The General Assembly shall prescribe the timing for
28 solicitation of applications and the process for evaluation of
29 candidates by the commission. From the applications received,
30 the commission shall agree, by the affirmative votes of at least

1 10 of the members, to a list of five of the most qualified
2 individuals whose names will be submitted to the Governor for
3 consideration for appointment. In comprising the list, the
4 commission shall consider that the appellate courts should
5 reflect the ~~geographic,~~ racial, ethnic, gender and other <--
6 diversity of this Commonwealth. Only one list shall be compiled
7 for each vacancy. Each individual whose name is submitted to the
8 Governor shall:

9 (1) be a resident of this Commonwealth for at least one year
10 immediately prior to submission of the individual's application;

11 (2) MEET RESIDENCY REQUIREMENTS UNDER SECTION 11(B), SUBJECT <--
12 TO ANY OTHER REQUIREMENT ESTABLISHED BY LAW REGARDING JUDICIAL
13 DISTRICTS;

14 ~~(2)~~ (3) be a licensed member of the bar of the Supreme Court <--
15 in good standing; and

16 ~~(3)~~ (4) for an aggregate of at least 10 years prior to the <--
17 individual's selection, have either practiced law or been
18 engaged in a law-related occupation.

19 (i) The General Assembly may provide for additional
20 procedures of the commission relating to the nomination of
21 candidates for judicial offices and for additional
22 qualifications of candidates, in both cases not inconsistent
23 with this section, as it deems appropriate in furthering the
24 purposes of this article.

25 (j) Members of the commission and its staff shall be
26 absolutely immune from suit for all conduct in the course of
27 their official duties.

28 ~~(4)~~ (8) That section 15 of Article V be amended to read: <--
29 § 15. Tenure of justices, judges and [justices of the peace]
30 magisterial district judges.

1 (a) [The] Except as provided in section 13(e), the regular
2 term of office of justices and judges shall be ten years and the
3 regular term of office for judges of the municipal court and
4 traffic court in the City of Philadelphia and of [justices of
5 the peace] magisterial district judges shall be six years. The
6 tenure of any justice or judge shall not be affected by changes
7 in judicial districts or by reduction in the number of judges.

8 (b) A justice or judge elected or appointed under section
9 [13(a), appointed under section 13(d)] 13 or retained under this
10 section 15(b) may file a declaration of candidacy for retention
11 election with the officer of the Commonwealth who under law
12 shall have supervision over elections on or before the first
13 Monday of January of the year preceding the year in which [his]
14 the term of office of the justice or judge expires. If no
15 declaration is filed, a vacancy shall exist upon the expiration
16 of the term of office of such justice or judge, to be filled by
17 [election under section 13(a) or by appointment under section
18 13(d) if applicable] appointment under section 13(b.1) or by <--
19 election under section 13(a) OR ELECTION UNDER SECTION 13. If a <--
20 justice or judge files a declaration, [his name] the name of the
21 justice or judge shall be submitted to the electors without
22 party designation, on a separate judicial ballot or in a
23 separate column on voting machines, at the municipal election
24 immediately preceding the expiration of the term of office of
25 the justice or judge, to determine only the question whether
26 [he] the justice or judge shall be retained in office. If a
27 majority is against retention, a vacancy shall exist upon the
28 expiration of [his] the term of office of that justice or judge,
29 to be filled by appointment under section [13(b) ~~for~~ under <--
30 section 13(d) if applicable] 13. If a majority favors retention, <--

1 the justice or judge shall serve for the regular term of office
2 provided herein, unless sooner removed or retired. At the
3 expiration of each term a justice or judge shall be eligible for
4 retention as provided herein, subject only to the retirement
5 provisions of this article.

6 Section 2. These proposed constitutional amendments will
7 become effective on January 1 next following approval by the
8 qualified electors of this Commonwealth under section 1 of
9 Article XI of the Constitution of Pennsylvania.

10 Section 3. (a) Upon the first passage by the General
11 Assembly of these proposed constitutional amendments, the
12 Secretary of the Commonwealth shall proceed immediately to
13 comply with the advertising requirements of section 1 of Article
14 XI of the Constitution of Pennsylvania and shall transmit the
15 required advertisements to two newspapers in every county in
16 which such newspapers are published in sufficient time after
17 passage of these proposed constitutional amendments.

18 (b) Upon the second passage by the General Assembly of these
19 proposed constitutional amendments, the Secretary of the
20 Commonwealth shall proceed immediately to comply with the
21 advertising requirements of section 1 of Article XI of the
22 Constitution of Pennsylvania and shall transmit the required
23 advertisements to two newspapers in every county in which such
24 newspapers are published in sufficient time after passage of
25 these proposed constitutional amendments. The Secretary of the
26 Commonwealth shall submit the proposed constitutional amendments
27 under section 1 of this resolution to the qualified electors of
28 this Commonwealth as a single ballot question at the first
29 general election which meets the requirements of and is in
30 conformance with section 1 of Article XI of the Constitution of

1 Pennsylvania and which occurs at least three months after the
2 proposed constitutional amendments are passed by the General
3 Assembly.