
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 263 Session of
2021

INTRODUCED BY SCHEMEL, MIHALEK, SOLOMON, ISAACSON, ECKER AND
ZABEL, JANUARY 26, 2021

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 26, 2021

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 2 of Article V be amended to read:

25 § 2. Supreme Court.

26 The Supreme Court (a) shall be the highest court of the
27 Commonwealth and in this court shall be reposed the supreme
28 judicial power of the Commonwealth;

29 (b) shall consist of seven justices, to be selected as
30 provided in section 13, one of whom shall be the Chief Justice;

1 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 provided in section
9 13, 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 provided in section 13, 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) Each judicial district shall be composed of compact and
24 contiguous territory as nearly equal in population as
25 practicable. Unless absolutely necessary, a county, city,
26 incorporated town, borough, township or ward may not be divided
27 in forming a judicial district.

28 (b) The General Assembly shall, by law, establish:

29 (1) An Eastern, Middle and Western Judicial District.
30 Justices and judges shall be selected from the three judicial

1 districts as follows:

2 (i) Two justices of the Supreme Court shall be selected from
3 within each judicial district and shall be residents of the
4 judicial district. One justice shall be selected on a Statewide
5 basis and may be a resident of any of the judicial districts.

6 (ii) Five judges of the Superior Court shall be selected
7 from within each judicial district and shall be residents of the
8 judicial district.

9 (iii) Three judges of the Commonwealth Court shall be
10 selected from within each judicial district and shall be
11 residents of the judicial district.

12 (2) A transition to an appellate court judiciary selected
13 from judicial districts.

14 (3) The effect of set judicial districts upon eligibility to
15 seek retention.

16 (4) The order in which justices of the Supreme Court and
17 judges of the Superior Court and the Commonwealth Court are
18 selected.

19 (5) Notwithstanding any of the provisions of paragraph (2),
20 (3) or (4), that all current members of the appellate court
21 shall serve out their current terms and be eligible to seek
22 retention on the schedule provided by law at the time of their
23 election to the appellate court prior to the adoption of this
24 subsection.

25 (6) The decennial realignment of the appellate judicial
26 districts beginning in 2021 and occurring each 10 years
27 thereafter based on the Federal decennial census.

28 (c) Residency qualification for appointment to the Supreme
29 Court, the Superior Court and the Commonwealth Court shall be
30 established by the General Assembly.

1 (d) Except as provided under this section or section 7(b),
2 the number and boundaries of all other judicial districts shall
3 be established by the General Assembly by law, with the advice
4 and consent of the Supreme Court.

5 (6) That section 13 of Article V be amended to read:

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

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

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

1 this section for the filling of vacancies in judicial offices.

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

1 Senate.

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

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

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

1 (e) Each justice or judge of the Superior Court or
2 Commonwealth Court appointed by the Governor under section
3 [13(d)] 13(b.1) shall hold office for an initial term ending the
4 first Monday of January following the next municipal election
5 more than [24] 48 months following the appointment.

6 (7) That section 14 of Article V be amended to read:

7 § 14. [Judicial Qualifications] Appellate Court Nominating
8 Commission.

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

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

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

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

28 (1) The commission shall be composed of 13 members as
29 follows:

30 (i) Five individuals appointed by the Governor, four of whom

1 shall be members of the bar of the Supreme Court in good
2 standing and one of whom shall not be a member of the bar of the
3 Supreme Court or of any other jurisdiction. The members
4 appointed under this subparagraph shall reside in different
5 counties and no more than three members may be registered in the
6 same political party.

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

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

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

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

1 (2) Except for the initial appointees whose terms shall be
2 staggered as provided by law, the members shall serve for terms
3 of four years. Each member must be at least 18 years of age and
4 a resident of this Commonwealth for at least one year
5 immediately prior to the member's appointment and throughout the
6 member's term on the commission.

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

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

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

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

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

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

25 (h) Whenever a vacancy occurs in the office of justice of
26 the Supreme Court or judge of the Superior Court or Commonwealth
27 Court for a judicial district established under section 11, the
28 commission shall publicly announce the vacancy and solicit
29 applications for individuals who desire to be considered for the
30 vacancy. The General Assembly shall prescribe the timing for

1 solicitation of applications and the process for evaluation of
2 candidates by the commission. From the applications received,
3 the commission shall agree, by the affirmative votes of at least
4 10 of the members, to a list of five of the most qualified
5 individuals whose names will be submitted to the Governor for
6 consideration for appointment. In comprising the list, the
7 commission may consider that the appellate courts reflect the
8 racial, ethnic, gender and other diversity of this Commonwealth.
9 Only one list shall be compiled for each vacancy. Each
10 individual whose name is submitted to the Governor shall:

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

13 (2) meet residency requirements under section 11(c), subject
14 to any other requirement established by law regarding judicial
15 districts;

16 (3) be a licensed member of the bar of the Supreme Court in
17 good standing; and

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

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

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

30 (8) That section 15 of Article V be amended to read:

1 § 15. Tenure of justices, judges and [justices of the peace]
2 magisterial district judges.

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

10 (b) A justice or judge elected or appointed under section
11 [13(a), appointed under section 13(d)] 13 or retained under this
12 section 15(b) may file a declaration of candidacy for retention
13 election with the officer of the Commonwealth who under law
14 shall have supervision over elections on or before the first
15 Monday of January of the year preceding the year in which [his]
16 the term of office of the justice or judge expires. If no
17 declaration is filed, a vacancy shall exist upon the expiration
18 of the term of office of such justice or judge, to be filled by
19 [election under section 13(a) or by appointment under section
20 13(d) if applicable] appointment or election under section 13.

21 If a justice or judge files a declaration, [his name] the name
22 of the justice or judge shall be submitted to the electors
23 without party designation, on a separate judicial ballot or in a
24 separate column on voting machines, at the municipal election
25 immediately preceding the expiration of the term of office of
26 the justice or judge, to determine only the question whether
27 [he] the justice or judge shall be retained in office. If a
28 majority is against retention, a vacancy shall exist upon the
29 expiration of [his] the term of office of that justice or judge,
30 to be filled by appointment under section [13(b) or under

1 section 13(d) if applicable] 13. If a majority favors retention,
2 the justice or judge shall serve for the regular term of office
3 provided herein, unless sooner removed or retired. At the
4 expiration of each term a justice or judge shall be eligible for
5 retention as provided herein, subject only to the retirement
6 provisions of this article.

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

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

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

1 conformance with section 1 of Article XI of the Constitution of
2 Pennsylvania and which occurs at least three months after the
3 proposed constitutional amendments are passed by the General
4 Assembly.