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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1336 Session of  
2015

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INTRODUCED BY CUTLER, DEAN, M. DALEY, BRIGGS, SIMS, McCARTER,  
LAWRENCE, ROSS, ZIMMERMAN, KAMPF, EVANKOVICH, MURT, ACOSTA,  
BROWNLEE, DAVIS, ROZZI, SCHREIBER, DiGIROLAMO, QUINN,  
DeLISSIO AND MULLERY, JUNE 16, 2015

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REFERRED TO COMMITTEE ON JUDICIARY, JUNE 16, 2015

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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 13 of Article V be amended to read:

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

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

1 municipal election next preceding the commencement of their  
2 respective terms of office by the electors of the [Commonwealth  
3 or the] respective districts in which they are to serve.

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

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

22 (2) If the Senate rejects the appointment of a nominee, the  
23 Governor shall make a substitute nomination from the  
24 commission's list within 30 days after the rejection from the  
25 Senate. The Senate shall act upon the nomination in the manner  
26 prescribed in paragraph (1). If the Senate rejects a total of  
27 three nominations made for a specific vacancy, the commission  
28 shall appoint any other individual on the list, the appointee  
29 shall take office upon notification of the appointment by the  
30 commission, and neither the Governor nor the Senate shall

1 participate further in the appointment process for that vacancy.

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

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

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

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

29 [(a) Should the method of judicial selection be adopted as  
30 provided in section 13 (d), there shall be a Judicial

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

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

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

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

18 (1) The commission shall be composed of 13 members as  
19 follows:

20 (i) Five individuals appointed by the Governor, four of whom  
21 shall be members of the bar of the Supreme Court in good  
22 standing and one of whom shall not be a member of the bar of the  
23 Supreme Court or of any other jurisdiction. The members  
24 appointed under this subparagraph shall reside in different  
25 counties and no more than three members may be registered in the  
26 same political party.

27 (ii) Two individuals appointed by the majority leader of the  
28 Senate, one of whom shall be a member of the bar of the Supreme  
29 Court in good standing and one of whom shall not be a member of  
30 the bar of the Supreme Court or of any other jurisdiction. The

1 members appointed under this subparagraph shall reside in  
2 different counties.

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

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

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

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

27 (3) No member of the commission, during the member's term,  
28 may hold office in a political party or political organization,  
29 hold an appointed or elected public office, whether compensated  
30 or uncompensated, or be an employee of the Commonwealth. An

1 individual who has held any of the foregoing positions within  
2 one year prior to the individual's appointment shall not be  
3 eligible to serve on the commission. The provisions of this  
4 paragraph shall not prohibit a member from serving as a part-  
5 time solicitor to a political subdivision.

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

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

24 (e) The Governor shall convene the first meeting of the  
25 commission. At that meeting and annually thereafter, the members  
26 of the commission shall elect a chairperson from among the  
27 members. Except as provided in section 13(e), the commission  
28 shall act only with the concurrence of a majority of its  
29 members.

30 (f) The commission shall prescribe general rules governing

1 the conduct of members. A member may be removed by the  
2 commission for a violation of the rules governing the conduct of  
3 members.

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

15 (h) Whenever a vacancy occurs in the office of justice of  
16 the Supreme Court or judge of the Superior Court or Commonwealth  
17 Court, the commission shall publicly announce the vacancy and  
18 solicit applications for individuals who desire to be considered  
19 for the vacancy. The General Assembly shall prescribe the timing  
20 for solicitation of applications and the process for evaluation  
21 of candidates by the commission. From the applications received,  
22 the commission shall agree, by the affirmative votes of at least  
23 ten of the members, to a list of five of the most qualified  
24 individuals whose names will be submitted to the Governor for  
25 consideration for appointment. In comprising the list, the  
26 commission shall consider that the appellate courts should  
27 reflect the geographic, racial, ethnic, gender and other  
28 diversity of this Commonwealth. Only one list shall be compiled  
29 for each vacancy. Each individual whose name is submitted to the  
30 Governor shall:

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

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

5 (3) for an aggregate of at least ten years prior to the  
6 individual's selection, have either practiced law or been  
7 engaged in a law-related occupation.

8 (i) The General Assembly may provide for additional  
9 procedures of the commission relating to the nomination of  
10 candidates for judicial offices and for additional  
11 qualifications of candidates, in both cases not inconsistent  
12 with this section, as it deems appropriate in furthering the  
13 purposes of this article.

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

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

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

27 (b) A justice of the Supreme Court or judge [elected under  
28 section 13(a),] of the Superior Court or Commonwealth Court  
29 appointed under section [13(d)] 13(b.1) or retained under this  
30 section 15(b) or a judge elected under section 13(a) or retained

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

26 Section 2. These proposed constitutional amendments will  
27 become effective on January 1 next following approval by the  
28 qualified electors of this Commonwealth under section 1 of  
29 Article XI of the Constitution of Pennsylvania.

30 Section 3. (a) Upon the first passage by the General

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

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