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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1083 Session of  
2015

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INTRODUCED BY SCHWANK, WILLIAMS, YUDICHAK, BLAKE, TARTAGLIONE,  
FONTANA, AUMENT, BAKER, HAYWOOD, FARNESE, BOSCOLA, WILEY AND  
TEPLITZ, DECEMBER 17, 2015

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REFERRED TO JUDICIARY, DECEMBER 17, 2015

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A JOINT RESOLUTION

1 Proposing an amendment to the Constitution of the Commonwealth  
2 of Pennsylvania, in Judiciary, further providing for  
3 suspension, removal, discipline and other sanctions.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby resolves as follows:

6 Section 1. The following amendment to the Constitution of  
7 Pennsylvania is proposed in accordance with Article XI:

8 (1) That section 18 of Article V be amended to read:

9 § 18. Suspension, removal, discipline and other sanctions.

10 (a) There shall be an independent board within the Judicial  
11 Branch, known as the Judicial Conduct Board, the composition,  
12 powers and duties of which shall be as follows:

13 (1) The board shall be composed of 12 members, as follows:

14 two judges, other than senior judges, one from the courts of  
15 common pleas and the other from either the Superior Court or the  
16 Commonwealth Court[, one justice of the peace who need not be a  
17 member of the bar of the Supreme Court, three non-judge members

1 of the bar of the Supreme Court and six non-lawyer electors.]  
2 two non-judge members of the bar of the Supreme Court, one non-  
3 judge member of the bar of the Supreme Court who is a legal  
4 ethics expert serving as faculty at an accredited law school  
5 located in this Commonwealth, and seven non-lawyer members of  
6 the public.

7 (2) The judge from [either the Superior Court or the  
8 Commonwealth Court, the justice of the peace, one non-judge  
9 member of the bar of the Supreme Court and three non-lawyer  
10 electors shall be appointed to the board by the Supreme Court.  
11 The judge from] the courts of common pleas, the judge from  
12 either the Superior Court or the Commonwealth Court, two non-  
13 judge members of the bar of the Supreme Court, one non-judge  
14 member of the bar of the Supreme Court who is a legal ethics  
15 expert serving as faculty at an accredited law school located in  
16 this Commonwealth and three non-lawyer [electors] members of the  
17 public shall be appointed to the board by the Governor. Four  
18 non-lawyer members of the public shall be appointed to the board  
19 by the General Assembly as follows: one each shall be appointed  
20 by the President pro tempore of the Senate, the Minority Leader  
21 of the Senate, the Speaker of the House of Representatives and  
22 the Minority Leader of the House of Representatives. In making  
23 appointments to the board, each appointing authority shall take  
24 into consideration that the board should include both men and  
25 women who come from racially and ethnically diverse backgrounds  
26 and reflect the geographic diversity of this Commonwealth.

27 (3) Except for the initial appointees whose terms shall be  
28 provided by the schedule to this article, the members shall  
29 serve for terms of four years. All members must be residents of  
30 this Commonwealth. No more than [three] two of the [six] four

1 members appointed by the [Supreme Court] General Assembly may be  
2 registered in the same political party. No more than [three]  
3 four of the [six] eight members appointed by the Governor may be  
4 registered in the same political party. Membership of a judge  
5 [or justice of the peace] shall terminate if the member ceases  
6 to hold the judicial position that qualified the member for the  
7 appointment. Membership shall terminate if a member attains a  
8 position that would have rendered the member ineligible for  
9 appointment at the time of the appointment. A vacancy shall be  
10 filled by the respective appointing authority for the remainder  
11 of the term to which the member was appointed. No member may  
12 serve more than four consecutive years but may be reappointed  
13 after a lapse of one year. The Governor shall convene the board  
14 for its first meeting. At that meeting and annually thereafter,  
15 the members of the board shall elect a chairperson. The board  
16 shall act only with the concurrence of a majority of its  
17 members.

18 (4) No member of the board, during the member's term, may  
19 hold office in a political party or political organization.  
20 Except for a judicial member, no member of the board, during the  
21 member's term, may hold a compensated public office or public  
22 appointment. All members shall be reimbursed for expenses  
23 necessarily incurred in the discharge of their official duties.

24 (5) The board shall prescribe general rules governing the  
25 conduct of members. A member may be removed by the board for a  
26 violation of the rules governing the conduct of members.

27 (6) The board shall appoint a chief counsel and other staff,  
28 prepare and administer its own budget as provided by law,  
29 exercise supervisory and administrative authority over all board  
30 staff and board functions, establish and promulgate its own

1 rules of procedure, prepare and disseminate an annual report and  
2 take other actions as are necessary to ensure its efficient  
3 operation. [The budget request of the board shall be made by the  
4 board as a separate item in the request submitted by the Supreme  
5 Court on behalf of the Judicial Branch to the General Assembly.]  
6 The budget request of the board shall be made by the board as a  
7 separate request to the General Assembly from that of the  
8 Supreme Court on behalf of the Judicial Branch. A chief counsel  
9 appointed by the board shall, for an aggregate of at least 10  
10 years preceding the person's appointment as the board's chief  
11 counsel, be a member of the bar of the Supreme Court in good  
12 standing, have not been employed by the Administrative Office of  
13 Pennsylvania Courts, the office of Attorney General or offices  
14 of county district attorneys and have not served as a justice,  
15 judge or justice of the peace of a court or courts of record in  
16 this Commonwealth.

17 (7) The board shall receive and investigate complaints  
18 regarding judicial conduct filed by individuals or initiated by  
19 the board; issue subpoenas to compel testimony under oath of  
20 witnesses, including the subject of the investigation, and to  
21 compel the production of documents, books, accounts and other  
22 records relevant to the investigation; determine whether there  
23 is probable cause to file formal charges against a justice,  
24 judge or justice of the peace for conduct proscribed by this  
25 section; and present the case in support of the charges before  
26 the Court of Judicial Discipline.

27 (8) Complaints filed with the board or initiated by the  
28 board shall not be public information. Statements, testimony,  
29 documents, records or other information or evidence acquired by  
30 the board in the conduct of an investigation shall not be public

1 information. A justice, judge or justice of the peace who is the  
2 subject of a complaint filed with the board or initiated by the  
3 board or of an investigation conducted by the board shall be  
4 apprised of the nature and content of the complaint and afforded  
5 an opportunity to respond fully to the complaint prior to any  
6 probable cause determination by the board. All proceedings of  
7 the board shall be confidential except when the subject of the  
8 investigation waives confidentiality. If, independent of any  
9 action by the board, the fact that an investigation by the board  
10 is in progress becomes a matter of public record, the board may,  
11 at the direction of the subject of the investigation, issue a  
12 statement to confirm that the investigation is in progress, to  
13 clarify the procedural aspects of the proceedings, to explain  
14 the rights of the subject of the investigation to a fair hearing  
15 without prejudgment or to provide the response of the subject of  
16 the investigation to the complaint. In acting to dismiss a  
17 complaint for lack of probable cause to file formal charges, the  
18 board may, at its discretion, issue a statement or report to the  
19 complainant or to the subject of the complaint, which may  
20 contain the identity of the complainant, the identity of the  
21 subject of the complaint, the contents and nature of the  
22 complaint, the actions taken in the conduct of the investigation  
23 and the results and conclusions of the investigation. The board  
24 may include with a report a copy of information or evidence  
25 acquired in the course of the investigation.

26 (9) If the board finds probable cause to file formal charges  
27 concerning mental or physical disability against a justice,  
28 judge or justice of the peace, the board shall so notify the  
29 subject of the charges and provide the subject with an  
30 opportunity to resign from judicial office or, when appropriate,

1 to enter a rehabilitation program prior to the filing of the  
2 formal charges with the Court of Judicial Discipline.

3 (10) Members of the board and its chief counsel and staff  
4 shall be absolutely immune from suit for all conduct in the  
5 course of their official duties. No civil action or disciplinary  
6 complaint predicated upon the filing of a complaint or other  
7 documents with the board or testimony before the board may be  
8 maintained against any complainant, witness or counsel.

9 (b) There shall be a Court of Judicial Discipline, the  
10 composition, powers and duties of which shall be as follows:

11 (1) The court shall be composed of a total of eight members  
12 as follows: [three] two judges other than senior judges, one  
13 from the courts of common pleas[, ] and the other from either the  
14 Superior Court or the Commonwealth Court, [one justice of the  
15 peace,] two non-judge members of the bar of the Supreme Court  
16 and [two] four non-lawyer [electors] members of the public. [Two  
17 judges, the justice of the peace and one non-lawyer elector  
18 shall be appointed to the court by the Supreme Court. One  
19 judge,] The judge from the courts of common pleas, the judge  
20 from either the Superior Court or the Commonwealth Court, and  
21 the two non-judge members of the bar of the Supreme Court [and  
22 one non-lawyer elector] shall be appointed to the court by the  
23 Governor. Four non-lawyer members of the public shall be  
24 appointed to the board by the General Assembly as follows: one  
25 each shall be appointed by the President pro tempore of the  
26 Senate, the Minority Leader of the Senate, the Speaker of the  
27 House of Representatives and the Minority Leader of the House of  
28 Representatives. In making appointments to the board, each  
29 appointing authority shall take into consideration that the  
30 board should include both men and women who come from racially

1 and ethnically diverse backgrounds and reflect the geographic  
2 diversity of this Commonwealth.

3 (2) Except for the initial appointees whose terms shall be  
4 provided by the schedule to this article, each member shall  
5 serve for a term of four years; however, the member, rather than  
6 the member's successor, shall continue to participate in any  
7 hearing in progress at the end of the member's term. All members  
8 must be residents of this Commonwealth. No more than two of the  
9 members appointed by the [Supreme Court] General Assembly may be  
10 registered in the same political party. No more than two of the  
11 members appointed by the Governor may be registered in the same  
12 political party. Membership of a judge [or justice of the peace]  
13 shall terminate if the judge [or justice of the peace] ceases to  
14 hold the judicial position that qualified the judge or justice  
15 of the peace for appointment. Membership shall terminate if a  
16 member attains a position that would have rendered that person  
17 ineligible for appointment at the time of the appointment. A  
18 vacancy on the court shall be filled by the respective  
19 appointing authority for the remainder of the term to which the  
20 member was appointed in the same manner in which the original  
21 appointment occurred. No member of the court may serve more than  
22 four consecutive years but may be reappointed after a lapse of  
23 one year.

24 (3) The court shall prescribe general rules governing the  
25 conduct of members. A member may be removed by the court for a  
26 violation of the rules of conduct prescribed by the court. No  
27 member, during the member's term of service, may hold office in  
28 any political party or political organization. Except for a  
29 judicial member, no member of the court, during the member's  
30 term of service, may hold a compensated public office or public

1 appointment. All members of the court shall be reimbursed for  
2 expenses necessarily incurred in the discharge of their official  
3 duties.

4 (4) The court shall appoint staff and prepare and administer  
5 its own budget as provided by law and undertake actions needed  
6 to ensure its efficient operation. All actions of the court,  
7 including disciplinary action, shall require approval by a  
8 majority vote of the members of the court. [The budget request  
9 of the court shall be made as a separate item in the request by  
10 the Supreme Court on behalf of the Judicial Branch to the  
11 General Assembly.] The budget request of the court shall be made  
12 by the court as a separate request to the General Assembly from  
13 that of the Supreme Court on behalf of the Judicial Branch. The  
14 court shall adopt rules to govern the conduct of proceedings  
15 before the court.

16 (4.1) Upon the filing of formal charges with the court by  
17 the board, the court shall issue an interim order directing the  
18 immediate suspension, with pay, of any justice, judge or justice  
19 of the peace against whom formal charges have been filed with  
20 the court by the board. The court shall issue an interim order  
21 directing the immediate suspension, with or without pay, of any  
22 justice, judge or justice of the peace against whom has been  
23 filed an indictment or information charging a felony. An interim  
24 order under this paragraph shall not be considered a final order  
25 from which an appeal may be taken.

26 (5) Upon the filing of formal charges with the court by the  
27 board, the court shall promptly schedule a hearing or hearings  
28 to determine whether a sanction should be imposed against a  
29 justice, judge or justice of the peace pursuant to the  
30 provisions of this section. The court shall be a court of

1 record, with all the attendant duties and powers appropriate to  
2 its function. Formal charges filed with the court shall be a  
3 matter of public record. All hearings conducted by the court  
4 shall be public proceedings conducted pursuant to the rules  
5 adopted by the court and in accordance with the principles of  
6 due process and the law of evidence. Parties appearing before  
7 the court shall have a right to discovery pursuant to the rules  
8 adopted by the court and shall have the right to subpoena  
9 witnesses and to compel the production of documents, books,  
10 accounts and other records as relevant. The subject of the  
11 charges shall be presumed innocent in any proceeding before the  
12 court, and the board shall have the burden of proving the  
13 charges by clear and convincing evidence. All decisions of the  
14 court shall be in writing and shall contain findings of fact and  
15 conclusions of law. A decision of the court may order removal  
16 from office, suspension, censure or other discipline as  
17 authorized by this section and as warranted by the record.

18 (6) Members of the court and the court's staff shall be  
19 absolutely immune from suit for all conduct in the course of  
20 their official duties, and no civil action or disciplinary  
21 complaint predicated on testimony before the court may be  
22 maintained against any witness or counsel.

23 (c) Decisions of the court shall be subject to review as  
24 follows:

25 (1) A justice, judge or justice of the peace shall have the  
26 right to appeal a final adverse order of discipline of the  
27 court. A judge or justice of the peace shall have the right to  
28 appeal to the Supreme Court in a manner consistent with rules  
29 adopted by the Supreme Court; a justice shall have the right to  
30 appeal to a special tribunal composed of seven judges, other

1 than senior judges, chosen by lot from the judges of the  
2 Superior Court and Commonwealth Court who do not sit on the  
3 Court of Judicial Discipline or the board, in a manner  
4 consistent with rules adopted by the Supreme Court. The special  
5 tribunal shall hear and decide the appeal in the same manner in  
6 which the Supreme Court would hear and decide an appeal from an  
7 order of the court.

8 (2) On appeal, the Supreme Court or special tribunal shall  
9 review the record of the proceedings of the court as follows: on  
10 the law, the scope of review is plenary; on the facts, the scope  
11 of review is clearly erroneous; and, as to sanctions, the scope  
12 of review is whether the sanctions imposed were lawful. The  
13 Supreme Court or special tribunal may revise or reject an order  
14 of the court upon a determination that the order did not sustain  
15 this standard of review; otherwise, the Supreme Court or special  
16 tribunal shall affirm the order of the court.

17 (3) An order of the court which dismisses a complaint  
18 against a judge or justice of the peace may be appealed by the  
19 board to the Supreme Court, but the appeal shall be limited to  
20 questions of law. An order of the court which dismisses a  
21 complaint against a justice of the Supreme Court may be appealed  
22 by the board to a special tribunal in accordance with paragraph  
23 (1), but the appeal shall be limited to questions of law.

24 (4) No justice, judge or justice of the peace may  
25 participate as a member of the board, the court, a special  
26 tribunal or the Supreme Court in any proceeding in which the  
27 justice, judge or justice of the peace is a complainant, the  
28 subject of a complaint, a party or a witness.

29 (d) A justice, judge or justice of the peace shall be  
30 subject to disciplinary action pursuant to this section as

1 follows:

2 (1) A justice, judge or justice of the peace may be  
3 suspended, removed from office or otherwise disciplined for  
4 conviction of a felony; violation of section 17 of this article;  
5 misconduct in office; neglect or failure to perform the duties  
6 of office or conduct which prejudices the proper administration  
7 of justice or brings the judicial office into disrepute, whether  
8 or not the conduct occurred while acting in a judicial capacity  
9 or is prohibited by law; or conduct in violation of a canon or  
10 rule prescribed by the Supreme Court. In the case of a mentally  
11 or physically disabled justice, judge or justice of the peace,  
12 the court may enter an order of removal from office, retirement,  
13 suspension or other limitations on the activities of the  
14 justice, judge or justice of the peace as warranted by the  
15 record. Upon a final order of the court for suspension without  
16 pay or removal, prior to any appeal, the justice, judge or  
17 justice of the peace shall be suspended or removed from office;  
18 and the salary of the justice, judge or justice of the peace  
19 shall cease from the date of the order.

20 [(2) Prior to a hearing, the court may issue an interim  
21 order directing the suspension, with or without pay, of any  
22 justice, judge or justice of the peace against whom formal  
23 charges have been filed with the court by the board or against  
24 whom has been filed an indictment or information charging a  
25 felony. An interim order under this paragraph shall not be  
26 considered a final order from which an appeal may be taken.]

27 (3) A justice, judge or justice of the peace convicted of  
28 misbehavior in office by a court, disbarred as a member of the  
29 bar of the Supreme Court or removed under this section shall  
30 forfeit automatically his judicial office and thereafter be

1 ineligible for judicial office.

2 (4) A justice, judge or justice of the peace who files for  
3 nomination for or election to any public office other than a  
4 judicial office shall forfeit automatically his judicial office.

5 (5) This section is in addition to and not in substitution  
6 for the provisions for impeachment for misbehavior in office  
7 contained in Article VI. No justice, judge or justice of the  
8 peace against whom impeachment proceedings are pending in the  
9 Senate shall exercise any of the duties of office until  
10 acquittal.

11 (e) Notwithstanding any provision in this article, the  
12 Supreme Court shall be prohibited from exercising its authority  
13 at King's Bench or its power of extraordinary jurisdiction to  
14 initiate or assume jurisdiction of a disciplinary proceeding  
15 against a justice, judge or justice of the peace.

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

24 (b) Upon the second passage by the General Assembly of this  
25 proposed constitutional amendment, the Secretary of the  
26 Commonwealth shall proceed immediately to comply with the  
27 advertising requirements of section 1 of Article XI of the  
28 Constitution of Pennsylvania and shall transmit the required  
29 advertisements to two newspapers in every county in which such  
30 newspapers are published in sufficient time after passage of

1 this proposed constitutional amendment. The Secretary of the  
2 Commonwealth shall submit this proposed constitutional amendment  
3 to the qualified electors of this Commonwealth at the first  
4 primary, general or municipal election which meets the  
5 requirements of and is in conformance with section 1 of Article  
6 XI of the Constitution of Pennsylvania and which occurs at least  
7 three months after the proposed constitutional amendment is  
8 passed by the General Assembly.