



State of Wisconsin
2009 - 2010 LEGISLATURE

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2009 ASSEMBLY JOINT RESOLUTION 96

November 24, 2009 – Introduced by Representatives GOTTlieb, STONE, TAUCHEN, BROOKS, A. OTT and RIPP, cosponsored by Senator SCHULTZ. Referred to Committee on State Affairs and Homeland Security.

- 1 **To amend** section 4 (1) of article VII, section 9 of article VII and section 10 (1) of
- 2 article VII; and **to create** section 4 (1) (d) and (e) of article VII and section 1m
- 3 of article XIII of the constitution; **relating to:** appointment of supreme court
- 4 justices and elections to consider retention of justices (first consideration).

Analysis by the Legislative Reference Bureau

Under current law, supreme court justices are elected by the people. This proposed constitutional amendment, proposed to the 2009 legislature on first consideration, requires the governor to appoint, with the advice and consent of three-fifths of the senate, justices of the supreme court for ten-year terms. Once appointed, justices may be retained for additional ten-year terms by a vote of the people. Justices serving on the supreme court at the time of ratification would be eligible to stand for election for retention. If a justice declines retention, the governor must appoint a new justice with the advice and consent of three-fifths of the senate. When vacancies occur on the supreme court, the governor must appoint a new justice for a ten-year term with the advice and consent of three-fifths of the senate. Appointees to the supreme court will be required to have served at least eight years as a judge of the circuit court or the court of appeals. Currently, the constitution prohibits any elected justice or judge from holding any other public office. This amendment extends the prohibition to appointed justices and judges.

A proposed constitutional amendment requires adoption by two successive legislatures, and ratification by the people, before it can become effective.

Resolved by the assembly, the senate concurring, That:

SECTION 1. Section 4 (1) of article VII of the constitution is amended to read:

[Article VII] Section 4 (1) (a) The supreme court shall have 7 members who shall be known as justices of the supreme court.

(b) Justices shall be elected for 10-year terms of office commencing with the August 1 next succeeding the election. Only one justice may be elected in any year.

This paragraph does not apply on or after the day that is one year after the date of ratification of par. (d).

(c) Any 4 justices shall constitute a quorum for the conduct of the court's business.

SECTION 2. Section 4 (1) (d) and (e) of article VII of the constitution are created to read:

[Article VII] Section 4 (1) (d) Beginning on the day that is one year after the date of ratification of this paragraph, each justice's name shall be placed on the ballot for retention in office at the nonpartisan election held in the same year the justice's term expires and preceding the end of the justice's term, unless the justice notifies the clerk of the supreme court at least 120 days prior to election day that the justice declines retention. The voters shall be given the option to vote "for retention" or "against retention." If a majority of the votes cast are "against retention," or if the justice declines retention, the justice's appointment shall cease at the end of the justice's term, and the governor shall appoint a different person within 90 days, who shall assume office upon confirmation; otherwise, the justice shall continue to serve for another 10-year term.

1 (e) Each person who is serving as a justice on the day before the date that is one
2 year after the date of ratification of par. (d) may continue to serve until the person's
3 term expires, unless the person vacates his or her office before that time.

4 **SECTION 3.** Section 9 of article VII of the constitution is amended to read:

5 [Article VII] Section 9. When a vacancy occurs in the office of justice of the
6 ~~supreme court or~~ judge of any court of record, the vacancy shall be filled by
7 appointment by the governor, which shall continue until a successor is elected and
8 qualified. There shall be no election for a justice or judge at the partisan general
9 election for state or county officers, nor within 30 days either before or after such
10 election. When a vacancy occurs in the office of justice of the supreme court, the
11 governor shall nominate and, with the advice and consent of the senate upon a vote
12 of three-fifths of the members present and voting, appoint a new justice to serve the
13 unexpired term. Within 90 days of the nomination, the senate shall vote on
14 confirmation. If the nominee is not confirmed, the governor shall, within 90 days,
15 nominate a different person.

16 **SECTION 4.** Section 10 (1) of article VII of the constitution is amended to read:

17 [Article VII] Section 10 (1) No justice of the supreme court or judge of any court
18 of record shall hold any other office of public trust, except a judicial office, during the
19 term for which he or she is elected or appointed. No person shall be eligible to the
20 office of judge who shall not, at the time of election or appointment, be a qualified
21 elector within the jurisdiction for which chosen, nor shall any person be eligible to
22 serve as justice of the supreme court who has not served at least 8 years as a judge
23 of the circuit court or the court of appeals.

24 **SECTION 5.** Section 1m of article XIII of the constitution is created to read:

1 [Article XIII] Section 1m. The legislature shall provide by law for a nonpartisan
2 election to be held in any year when it is required to elect or vote on retention of one
3 or more nonpartisan officers in that year.

4 **SECTION 6. Numbering of new provisions.** If another constitutional
5 amendment ratified by the people creates the number of any provision created in this
6 joint resolution, the chief of the legislative reference bureau shall determine the
7 sequencing and the numbering of the provisions whose numbers conflict.

8 ***Be it further resolved, That*** this proposed amendment be referred to the
9 legislature to be chosen at the next general election and that it be published for 3
10 months previous to the time of holding such election.

11 (END)