

REFERENCE TITLE: superior court judges; vacancies

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SCR 1012

Introduced by
Senators Gray C: Harper

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI, SECTIONS 12, 28, 30, 35, 37, 38, 40 AND 41, CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI, CONSTITUTION OF ARIZONA, BY ADDING SECTION 43; RELATING TO THE JUDICIAL DEPARTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the Senate of the State of Arizona, the House of
2 Representatives concurring:

3 1. Article VI, sections 12, 28, 30, 35, 37, 38, 40 and 41,
4 Constitution of Arizona, are proposed to be amended as follows if approved by
5 the voters and on proclamation of the Governor:

6 12. Superior court; term of office

7 Section 12. A. Judges of the superior court in counties
8 having a population of less than ~~two~~ FIVE hundred ~~fifty~~ thousand
9 persons according to the most recent United States census shall
10 be elected by the qualified electors of their counties at the
11 general election. They shall hold office for a regular term of
12 four years except as provided by this section from and after the
13 first Monday in January next succeeding their election, and
14 until their successors are elected and qualify. The names of
15 all candidates for judge of the superior court in such counties
16 shall be placed on the regular ballot without partisan or other
17 designation except the division and title of the office.

18 B. The governor shall fill any vacancy in such counties
19 by appointing a person to serve until the election and
20 qualification of a successor. At the next succeeding general
21 election following the appointment of a person to fill a
22 vacancy, a judge shall be elected to serve for the remainder of
23 the unexpired term.

24 Judges of the superior court in counties having a
25 population of ~~two~~ FIVE hundred ~~fifty~~ thousand persons or more
26 according to the most recent United States census shall hold
27 office for a regular term of four years except as provided by
28 this article.

29 28. Justices and judges; dual office holding;
30 political activity; practice of law

31 Section 28. Justices and judges of courts of record shall
32 not be eligible for any other public office or for any other
33 public employment during their term of office, except that they
34 may assume another judicial office, and upon qualifying
35 therefor, the office formerly held shall become vacant. No
36 justice or judge of any court of record shall practice law
37 during his continuance in office, nor shall he hold any office
38 in a political party or actively take part in any political
39 campaign other than his own for his reelection or retention in
40 office. Any justice or judge who files nomination papers for an
41 elective office, other than for judge of the superior court or a
42 court of record inferior to the superior court in a county
43 having a population of less than ~~two~~ FIVE hundred ~~fifty~~ thousand
44 persons according to the most recent United States census,
45 forfeits his judicial office.

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30. Courts of record

Section 30. A. The supreme court, the court of appeals and the superior court shall be courts of record. Other courts of record may be established by law, but justice courts shall not be courts of record.

B. All justices and judges of courts of record, except for judges of the superior court and other courts of record inferior to the superior court in counties having a population of less than ~~two~~ FIVE hundred ~~fifty~~ thousand persons according to the most recent United States census, shall be appointed in the manner provided in section 37 of this article.

35. Continuance in office; continued existence of offices; application of prior statute and rules

Section 35. A. All justices, judges, justices of the peace and officers of any court who are holding office as such by election or appointment at the time of the adoption of this section **OR ANY AMENDMENT TO THIS SECTION** shall serve or continue in office for the respective terms for which they are so elected or for their respective unexpired terms, and until their successors are elected or appointed and qualify or they are retained in office pursuant to section 38 of this article; ~~provided, however,~~ **EXCEPT** that any justice or judge elected at the general election at which this section is adopted shall serve for the term for which he is so elected. The continued existence of any office heretofore legally established or held shall not be abolished or repealed by the adoption of this article. The statutes and rules relating to the authority, jurisdiction, practice and procedure of courts, judicial officers and offices in force at the time of the adoption of this article and not inconsistent herewith, ~~shall,~~ so far as applicable, apply to and govern such courts, judicial officers and offices until amended or repealed.

B. All judges of the superior court holding office by appointment or retention in counties with a population of ~~two~~ FIVE hundred ~~fifty~~ thousand persons or more according to the most recent United States census at the time of the adoption of this amendment **OR ANY SUBSEQUENT AMENDMENT** to this section shall serve or continue in office for the respective terms for which they were appointed. Upon an incumbent vacating the office of judge of the superior court, whether by failing to file a declaration for retention, by rejection by the qualified electors of the county or resignation, the appointment shall be pursuant to section 37 of this article.

1 37. Judicial vacancies and appointments: initial
 2 terms: residence: age

3 Section 37. A. Within sixty days from the occurrence of
 4 a vacancy in the office of a justice or judge of any court of
 5 record, except for vacancies occurring in the office of a judge
 6 of the superior court or a judge of a court of record inferior
 7 to the superior court, the commission on appellate court
 8 appointments, if the vacancy is in the supreme court or an
 9 intermediate appellate court of record, shall submit to the
 10 governor the names of not less than three persons nominated by
 11 it to fill such vacancy, no more than two of whom shall be
 12 members of the same political party unless there are more than
 13 four such nominees, in which event not more than sixty ~~percentum~~
 14 ~~PER CENT~~ of such nominees shall be members of the same political
 15 party.

16 B. Within sixty days from the occurrence of a vacancy in
 17 the office of a judge of the superior court or a judge of a
 18 court of record inferior to the superior court except for
 19 vacancies occurring in the office of a judge of the superior
 20 court or a judge of a court of record inferior to the superior
 21 court in a county having a population of less than ~~two~~ FIVE
 22 hundred ~~fifty~~ thousand persons according to the most recent
 23 United States census, the commission on trial court appointments
 24 for the county in which the vacancy occurs shall submit to the
 25 governor the names of not less than three persons nominated by
 26 it to fill such vacancy, no more than two of whom shall be
 27 members of the same political party unless there are more than
 28 four such nominees, in which event no more than sixty per ~~centum~~
 29 ~~CENT~~ of such nominees shall be members of the same political
 30 party. A nominee shall be under sixty-five years of age at the
 31 time ~~his~~ THE NOMINEE'S name is submitted to the governor.
 32 Judges of the superior court shall be subject to retention or
 33 rejection by a vote of the qualified electors of the county from
 34 which they were appointed at the general election in the manner
 35 provided by section 38 of this article.

36 C. A vacancy in the office of a justice or a judge of
 37 such courts of record shall be filled by appointment by the
 38 governor without regard to political affiliation from one of the
 39 nominees whose names ~~shall be~~ ARE submitted to ~~him as~~
 40 ~~hereinabove provided~~ THE GOVERNOR PURSUANT TO SUBSECTION A. FOR
 41 A VACANCY IN THE OFFICE OF A JUDGE OF THE SUPERIOR COURT, THE
 42 GOVERNOR SHALL SUBMIT TO THE SENATE FOR THE CONSENT OF THE
 43 SENATE THE NAME OF THE NOMINEE FOR JUDGE WHO SHALL BE ANY PERSON
 44 OF THE GOVERNOR'S OWN CHOOSING WITHOUT REGARD TO ANY NOMINEES
 45 SUBMITTED BY THE COMMISSION ON TRIAL COURT APPOINTMENTS. IF THE

1 SENATE CONSENTS TO THE NOMINATION, THE GOVERNOR SHALL APPOINT
 2 THE NOMINEE TO SERVE FOR THE TERM OR, IN THE CASE OF A VACANCY,
 3 FOR THE UNEXPIRED TERM IN WHICH THE VACANCY OCCURRED. IF THE
 4 SENATE REJECTS THE NOMINATION, THE GOVERNOR SHALL PROMPTLY
 5 NOMINATE ANOTHER PERSON WHO MEETS THE REQUIREMENTS FOR THE
 6 OFFICE OF JUDGE. NOTWITHSTANDING ANY OTHER LAW, A PERSON WHO IS
 7 THE GOVERNOR'S NOMINEE FOR SUPERIOR COURT JUDGE SHALL NOT SERVE
 8 AS A SUPERIOR COURT JUDGE UNLESS AND UNTIL CONFIRMED BY THE
 9 CONSENT OF THE SENATE. In making the appointment FOR A JUSTICE
 10 OR JUDGE OF A COURT OF RECORD, the governor shall consider the
 11 diversity of the state's population for an appellate court
 12 appointment and the diversity of the county's population for a
 13 trial court appointment, however, the primary consideration
 14 shall be merit. If the governor does not appoint one of such
 15 nominees to fill such vacancy within sixty days after their
 16 names are submitted to the governor by such commission, the
 17 chief justice of the supreme court forthwith shall appoint on
 18 the basis of merit alone without regard to political affiliation
 19 one of such nominees to fill such vacancy. If such commission
 20 does not, within sixty days after such vacancy occurs, submit
 21 the names of nominees ~~as hereinabove provided~~ PURSUANT TO
 22 SUBSECTION A, the governor shall have the power to appoint any
 23 qualified person to fill such vacancy at any time thereafter
 24 prior to the time the names of the nominees to fill such vacancy
 25 are submitted to the governor ~~as hereinabove provided~~ PURSUANT
 26 TO SUBSECTION A. Each justice or judge so appointed shall
 27 initially hold office for a term ending sixty days following the
 28 next regular general election after the expiration of a term of
 29 two years in office. Thereafter, the terms of justices or
 30 judges of the supreme court and the superior court shall be as
 31 provided by this article.

32 D. A person appointed to fill a vacancy on an
 33 intermediate appellate court or another court of record now
 34 existing or hereafter established by law shall have been a
 35 resident of the counties or county in which that vacancy exists
 36 for at least one year ~~prior to his~~ BEFORE THE PERSON'S
 37 appointment, in addition to possessing the other required
 38 qualifications. A nominee shall be under sixty-five years of
 39 age at the time ~~his~~ THE NOMINEE'S name is submitted to the
 40 ~~governor~~ SENATE.

41 38. Declaration of candidacy; form of judicial ballot,
 42 rejection and retention; failure to file
 43 declaration

44 Section 38. A. EXCEPT AS PROVIDED IN SECTION 43 OF THIS
 45 ARTICLE, a justice or judge of the supreme court or an

1 intermediate appellate court shall file in the office of the
 2 secretary of state, and a judge of the superior court or other
 3 court of record including such justices or judges who are
 4 holding office as such by election or appointment at the time of
 5 the adoption of this section except for judges of the superior
 6 court and other courts of record inferior to the superior court
 7 in counties having a population of less than ~~two~~ FIVE hundred
 8 ~~fifty~~ thousand persons, according to the United States census,
 9 shall file in the office of the clerk of the board of
 10 supervisors of the county in which he regularly sits and
 11 resides, not less than ~~sixty~~ ONE HUNDRED FIVE nor more than
 12 ~~ninety~~ ONE HUNDRED THIRTY FIVE days ~~prior to~~ BEFORE the ~~regular~~
 13 ~~general~~ PRIMARY election next preceding the expiration of his
 14 term of office, a declaration of his desire to be retained in
 15 office, and the secretary of state shall certify to the several
 16 boards of supervisors the appropriate names of the candidate or
 17 candidates appearing on such declarations filed in his office.

18 B. The name of any justice or judge whose declaration is
 19 filed as provided in this section shall be placed on the
 20 appropriate official ballot at the next regular general election
 21 under a nonpartisan designation and in substantially the
 22 following form:

23 Shall _____, (Name of justice or judge) of the
 24 _____ court be retained in office? Yes ___ No ___ (Mark
 25 X after one).

26 C. If a majority of those voting on the question votes
 27 "No," ~~then~~, upon the expiration of the term for which such
 28 justice or judge was serving, a vacancy shall exist, which shall
 29 be filled as provided by this article. If a majority of those
 30 voting on the question votes "Yes," such justice or judge shall
 31 remain in office for another term, subject to removal as
 32 provided by this constitution.

33 D. The votes shall be counted and canvassed and the
 34 result declared as in the case of state and county elections,
 35 whereupon a certificate of retention or rejection of the
 36 incumbent justice or judge shall be delivered to him by the
 37 secretary of state or the clerk of the board of supervisors, as
 38 the case may be.

39 E. If a justice or judge fails to file a declaration of
 40 his desire to be retained in office, as required by this
 41 section, ~~then~~ his office shall become vacant upon expiration of
 42 the term for which such justice or judge was serving.

40. Option for counties with less than five hundred thousand persons

Section 40. Notwithstanding any provision of this article to the contrary, any county having a population of less than ~~two~~ FIVE hundred ~~fifty~~ thousand persons, according to the most recent United States census, may choose to select its judges of the superior court or of courts of record inferior to the superior court as if it had a population of ~~two~~ FIVE hundred ~~fifty~~ thousand or more persons. Such choice shall be determined by vote of the qualified electors of such county voting on the question at an election called for such purpose by resolution of the board of supervisors of such county. If such qualified electors approve, ~~the provisions of~~ sections 12, 28, 30, 35 through 39, 41 and 42 shall apply as if such county had a population of ~~two~~ FIVE hundred ~~fifty~~ thousand persons or more.

41. Superior court divisions; commission on trial court appointments; membership; terms

A. Except as otherwise provided, judges of the superior court in counties having a population of ~~two~~ FIVE hundred ~~fifty~~ thousand persons or more according to the most recent United States census shall hold office for a regular term of four years.

B. There shall be a nonpartisan commission on trial court appointments for each county having a population of ~~two~~ FIVE hundred ~~fifty~~ thousand persons or more according to the most recent United States census which shall be composed of the following members:

1. The chief justice of the supreme court, who shall be the chairman of the commission. In the event of the absence or incapacity of the chairman the supreme court shall appoint a justice thereof to serve in ~~his~~ THE JUSTICE'S place and stead.

2. Five attorney members, none of whom shall reside in the same supervisorial district and not more than three of whom shall be members of the same political party, who are nominated by the board of governors of the state bar of Arizona and who are appointed by the governor subject to confirmation by the senate in the manner prescribed by law.

3. Ten nonattorney members, no more than two of whom shall reside in the same supervisorial district.

C. At least ninety days prior to a term expiring or within twenty-one days of a vacancy occurring for a nonattorney member on the commission for trial court appointments, the member of the board of supervisors from the district in which the vacancy has occurred shall appoint a nominating committee of seven members who reside in the district, not more than four of

1 whom may be from the same political party. The make-up of the
2 committee shall, to the extent feasible, reflect the diversity
3 of the population of the district. Members shall not be
4 attorneys and shall not hold any governmental office, elective
5 or appointive, for profit. The committee shall provide public
6 notice that a vacancy exists and shall solicit, review and
7 forward to the governor all applications along with the
8 committee's recommendations for appointment. The governor shall
9 appoint two persons from each supervisorial district who shall
10 not be of the same political party, subject to confirmation by
11 the senate in the manner prescribed by law.

12 D. In making or confirming appointments to trial court
13 commissions, the governor, the senate and the state bar shall
14 endeavor to see that the commission reflects the diversity of
15 the county's population.

16 E. Members of the commission shall serve staggered four
17 year terms, except that initial appointments for the five
18 additional nonattorney members and the two additional attorney
19 members of the commission shall be designated by the governor as
20 follows:

21 1. One appointment for a nonattorney member shall be for
22 a one-year term.

23 2. Two appointments for nonattorney members shall be for
24 a two-year term.

25 3. Two appointments for nonattorney members shall be for
26 a three-year term.

27 4. One appointment for an attorney member shall be for a
28 one-year term.

29 5. One appointment for an attorney member shall be for a
30 two-year term.

31 F. Vacancies shall be filled for the unexpired terms in
32 the same manner as the original appointments.

33 G. Attorney members of the commission shall have resided
34 in this state and shall have been admitted to practice in this
35 state by the supreme court for at least five years and shall
36 have resided in the supervisorial district from which they are
37 appointed for at least one year. Nonattorney members shall have
38 resided in this state for at least five years, shall have
39 resided in the supervisorial district for at least one year
40 before being nominated and shall not be judges, retired judges
41 nor admitted to practice before the supreme court. None of the
42 attorney or nonattorney members of the commission shall hold any
43 governmental office, elective or appointive, for profit and no
44 attorney member is eligible for appointment to any judicial

1 office of this state until one year after membership in the
2 commission terminates.

3 H. No person other than the chief justice shall serve at
4 the same time as a member of more than one judicial appointment
5 commission.

6 I. The commission shall submit the names of not less than
7 three individuals for nomination for the office of the superior
8 court judge pursuant to section 37 of this article.

9 J. Prior to making recommendations to the governor, the
10 commission shall conduct investigations, hold public hearings
11 and take public testimony. An executive session as prescribed
12 by rule may be held upon a two-thirds vote of the members of the
13 commission in a public hearing. Final decisions as to
14 recommendations shall be made without regard to political
15 affiliation in an impartial and objective manner. The
16 commission shall consider the diversity of the county's
17 population and the geographical distribution of the residences
18 of the judges throughout the county, however the primary
19 consideration shall be merit. Voting shall be in a public
20 hearing. The expenses of meetings of the commission and the
21 attendance of members thereof for travel and subsistence shall
22 be paid from the general fund of the state as state officers are
23 paid, upon claims approved by the chairman.

24 K. After public hearings the supreme court shall adopt
25 rules of procedure for the commission on trial court
26 appointments.

27 L. The members of the commission who were appointed
28 pursuant to section 36 of this article prior to the effective
29 date of this section may continue to serve until the expiration
30 of their normal terms. All subsequent appointments shall be
31 made as prescribed by this section.

32 2. Article VI, Constitution of Arizona, is proposed to be amended by
33 adding section 43 as follows if approved by the voters and on proclamation of
34 the Governor:

35 43. Election option; superior court judges

36 SECTION 43. A. NOTWITHSTANDING SECTION 38 OF THIS
37 ARTICLE, IN A COUNTY HAVING A POPULATION OF FIVE HUNDRED
38 THOUSAND OR MORE PERSONS, THE FOLLOWING APPLY:

39 1. ANY PERSON WHO IS OTHERWISE QUALIFIED AND WHO IS A
40 MEMBER OF THE SAME POLITICAL PARTY AS THE JUDGE MAY FILE A
41 NOMINATION PETITION TO RUN AS A CANDIDATE AGAINST A PARTICULAR
42 JUDGE OF THE SUPERIOR COURT WHO HAS FILED A DECLARATION TO BE
43 RETAINED IN OFFICE. THE NOMINATION PETITION SHALL BE FILED WITH
44 THE OFFICE OF THE CLERK OF THE BOARD OF SUPERVISORS OF THE
45 COUNTY WITHIN THE TIME PRESCRIBED BY LAW BEFORE THE PRIMARY

1 ELECTION. THE NAMES OF ANY ONE OR MORE CANDIDATES WHO FILE A
2 NOMINATING PETITION PURSUANT TO THIS PARAGRAPH AND THE SUPERIOR
3 COURT JUDGE AGAINST WHOM THE PERSON IS RUNNING SHALL BE PLACED
4 ON A PARTISAN PRIMARY ELECTION BALLOT AS PROVIDED BY LAW.

5 2. ANY PERSON WHO IS OTHERWISE QUALIFIED AND WHO IS NOT A
6 MEMBER OF THE SAME POLITICAL PARTY AS THE JUDGE MAY FILE A
7 PETITION FOR NOMINATION OTHER THAN BY PRIMARY AS OTHERWISE
8 PROVIDED BY LAW TO RUN AS A CANDIDATE IN THE GENERAL ELECTION
9 AGAINST A PARTICULAR JUDGE OF THE SUPERIOR COURT. THE NAMES OF
10 ANY ONE OR MORE CANDIDATES WHO FILE A NOMINATION PETITION
11 PURSUANT TO THIS PARAGRAPH AND THE SUPERIOR COURT JUDGE AGAINST
12 WHOM THE PERSON IS RUNNING SHALL BE PLACED ON THE GENERAL
13 ELECTION BALLOT AS PROVIDED BY LAW.

14 B. THE QUALIFIED ELECTORS OF THE COUNTY SHALL ELECT ONE
15 OF THE CANDIDATES FOR SUPERIOR COURT JUDGE AT THE NEXT GENERAL
16 ELECTION AS PROVIDED BY LAW. THE NAMES OF THE WINNER OF THE
17 PRIMARY ELECTION SHALL BE PLACED ON THE REGULAR BALLOT WITHOUT
18 PARTISAN OR OTHER DESIGNATION EXCEPT THE DIVISION AND TITLE OF
19 THE OFFICE. THE NAMES OF EACH CANDIDATE SHALL BE PLACED ON THE
20 BALLOT IN A SECTION THAT IS SEPARATE AND DISTINCT FROM THE
21 SECTION OF THE BALLOT IN WHICH THE NAMES OF ALL OTHER JUSTICES
22 AND JUDGES WHO ARE SEEKING RETENTION APPEAR.

23 3. The Secretary of State shall submit this proposition to the voters
24 at the next general election as provided by article XXI, Constitution of
25 Arizona.