

REFERENCE TITLE: **judicial appointments; senate confirmation**

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SCR 1002

Introduced by
Senators Harper: Nelson

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; REPEALING ARTICLE VI, SECTIONS 36 AND 41, CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI, SECTIONS 37, 38 AND 40, CONSTITUTION OF ARIZONA; 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 36 and 41, Constitution of Arizona, are
4 proposed to be repealed as follows if approved by the voters and on
5 proclamation of the Governor:

6 (a) Article VI, section 36, Constitution of Arizona,
7 relating to the commission on appellate court appointments, is
8 repealed.

9 (b) Article VI, section 41, Constitution of Arizona,
10 relating to the commission on trial court appointments, is
11 repealed.

12 2. Article VI, sections 37, 38 and 40, Constitution of Arizona, are
13 proposed to be amended as follows if approved by the voters and on
14 proclamation of the Governor:

15 37. Judicial vacancies and appointments; initial
16 terms; residence; age

17 Section 37. A. Within sixty days from the occurrence of
18 a vacancy in the office of a justice or judge of any court of
19 record, except for vacancies occurring in the office of a judge
20 of the superior court or a judge of a court of record inferior
21 to the superior court, the ~~commission on appellate court~~
22 ~~appointments, if the vacancy is in the supreme court or an~~
23 ~~intermediate appellate court of record, shall submit to the~~
24 ~~governor the names of not less than three persons nominated by~~
25 ~~it to fill such vacancy, no more than two of whom shall be~~
26 ~~members of the same political party unless there are more than~~
27 ~~four such nominees, in which event not more than sixty percentum~~
28 ~~of such nominees shall be members of the same political party~~
29 GOVERNOR SHALL APPOINT ANY PERSON OF THE GOVERNOR'S OWN CHOOSING
30 TO FILL THE VACANCY.

31 B. Within sixty days from the occurrence of a vacancy in
32 the office of a judge of the superior court or a judge of a
33 court of record inferior to the superior court except for
34 vacancies occurring in the office of a judge of the superior
35 court or a judge of a court of record inferior to the superior
36 court in a county having a population of less than two hundred
37 fifty thousand persons according to the most recent United
38 States census, the ~~commission on trial court appointments for~~
39 ~~the county in which the vacancy occurs shall submit to the~~
40 ~~governor the names of not less than three persons nominated by~~
41 ~~it to fill such vacancy, no more than two of whom shall be~~
42 ~~members of the same political party unless there are more than~~
43 ~~four such nominees, in which event no more than sixty per centum~~
44 ~~of such nominees shall be members of the same political~~
45 ~~party. A nominee shall be under sixty-five years of age at the~~

~~time his name is submitted to the governor. Judges of the superior court shall be subject to retention or rejection by a vote of the qualified electors of the county from which they were appointed at the general election in the manner provided by section 38 of this article~~ GOVERNOR SHALL APPOINT ANY PERSON OF THE GOVERNOR'S OWN CHOOSING TO FILL THE VACANCY.

C. A vacancy in the office of a justice or a judge of such courts of record shall be filled by appointment by the governor without regard to political affiliation ~~from one of the nominees whose names shall be submitted to him as hereinabove provided.~~ THE GOVERNOR SHALL SUBMIT TO THE SENATE FOR THE CONSENT OF THE SENATE THE NAME OF THE NOMINEE FOR JUSTICE OR JUDGE. IF THE SENATE CONSENTS TO THE NOMINATION, THE GOVERNOR SHALL APPOINT THE NOMINEE TO SERVE FOR THE TERM, OR IN THE CASE OF A VACANCY, FOR THE UNEXPIRED TERM IN WHICH THE VACANCY OCCURRED. IF THE SENATE REJECTS THE NOMINATION, THE GOVERNOR SHALL PROMPTLY NOMINATE ANOTHER PERSON WHO MEETS THE REQUIREMENTS FOR THE OFFICE OF JUSTICE OR JUDGE. EACH JUSTICE OR JUDGE WHO IS CONFIRMED BY THE SENATE PURSUANT TO THIS SECTION IS SUBJECT TO RECONFIRMATION BY THE SENATE EVERY FOUR YEARS. In making the appointment FOR A JUSTICE OR JUDGE OF A COURT OF RECORD, the governor shall consider the diversity of the state's population for an appellate court appointment and the diversity of the county's population for a trial court appointment, however, the primary consideration shall be merit. ~~If the governor does not appoint one of such nominees to fill such vacancy within sixty days after their names are submitted to the governor by such commission, the chief justice of the supreme court forthwith shall appoint on the basis of merit alone without regard to political affiliation one of such nominees to fill such vacancy. If such commission does not, within sixty days after such vacancy occurs, submit the names of nominees as hereinabove provided, the governor shall have the power to appoint any qualified person to fill such vacancy at any time thereafter prior to the time the names of the nominees to fill such vacancy are submitted to the governor as hereinabove provided.~~ Each justice or judge so appointed shall initially hold office for a term ending sixty days following the next regular general election after the expiration of a term of two years in office. Thereafter, the terms of justices or judges of the supreme court and the superior court shall be as provided by this article.

D. A person appointed to fill a vacancy on an intermediate appellate court or another court of record now existing or hereafter established by law shall have been a

1 resident of the counties or county in which that vacancy exists
 2 for at least one year ~~prior to his~~ BEFORE THE PERSON'S
 3 appointment, in addition to possessing the other required
 4 qualifications. A nominee shall be under sixty-five years of age
 5 at the time ~~his~~ THE NOMINEE'S name is submitted to the ~~governor~~
 6 SENATE.

7 38. Declaration of candidacy; form of judicial
 8 ballot, rejection and retention; failure to
 9 file declaration

10 Section 38. A. A justice or judge of the supreme court
 11 or an intermediate appellate court shall file in the office of
 12 the secretary of state, and a judge of the superior court or
 13 other court of record including such justices or judges who are
 14 holding office as such by election or appointment at the time of
 15 the adoption of this section except for judges of the superior
 16 court and other courts of record inferior to the superior court
 17 in counties having a population of less than two hundred fifty
 18 thousand persons, according to the United States census, shall
 19 file in the office of the clerk of the board of supervisors of
 20 the county in which he regularly sits and resides, not less than
 21 sixty nor more than ninety days ~~prior to~~ BEFORE the regular
 22 general election next preceding the expiration of his term of
 23 office, a declaration of his desire to be retained in office,
 24 and the secretary of state shall certify to the several boards
 25 of supervisors the appropriate names of the candidate or
 26 candidates appearing on such declarations filed in his office.

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

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

35 C. If a majority of those voting on the question votes
 36 "No," ~~then~~, upon the expiration of the term for which such
 37 justice or judge was serving, a vacancy shall exist, which shall
 38 be filled as provided by this article. If a majority of those
 39 voting on the question votes "Yes," such justice or judge shall
 40 remain in office for another term, subject to SENATE
 41 CONFIRMATION EVERY FOUR YEARS AND removal as provided by this
 42 constitution.

43 D. The votes shall be counted and canvassed and the
 44 result declared as in the case of state and county elections,
 45 whereupon a certificate of retention or rejection of the

1 incumbent justice or judge shall be delivered to him by the
2 secretary of state or the clerk of the board of supervisors, as
3 the case may be.

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

8 40. Option for counties with less than two hundred fifty
9 thousand persons

10 Section 40. Notwithstanding any provision of this article
11 to the contrary, any county having a population of less than two
12 hundred fifty thousand persons, according to the most recent
13 United States census, may choose to select its judges of the
14 superior court or of courts of record inferior to the superior
15 court as if it had a population of two hundred fifty thousand or
16 more persons. Such choice shall be determined by vote of the
17 qualified electors of such county voting on the question at an
18 election called for such purpose by resolution of the board of
19 supervisors of such county. If such qualified electors approve,
20 ~~the provisions of~~ sections 12, 28, 30, 35, ~~through 37, 38, 39,~~
21 ~~41~~ and 42 shall apply as if such county had a population of two
22 hundred fifty thousand persons or more.

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.