

REFERENCE TITLE: justices; judges; reappointment; reconfirmation

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SCR 1040

Introduced by
Senator Gould

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI, SECTIONS 4, 12, 28, 30, 35, 36, 37, 38, 39, 40, 41 AND 42, 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 4, 12, 28, 30, 35, 36, 37, 38, 39, 40, 41 and
4 42, Constitution of Arizona, are proposed to be amended as follows if
5 approved by the voters and on proclamation of the Governor:

6 4. Supreme court; appellate court; term of office

7 Section 4. A. THROUGH DECEMBER 31, 2012, justices of the
8 supreme court shall hold office for a regular term of six years
9 except as provided by this article.

10 B. FOR ANY TERM BEGINNING ON OR AFTER JANUARY 1, 2013,
11 JUSTICES OF THE SUPREME COURT AND JUDGES OF ANY INTERMEDIATE
12 APPELLATE COURT SHALL HOLD OFFICE FOR A REGULAR TERM OF EIGHT
13 YEARS EXCEPT AS PROVIDED BY THIS ARTICLE.

14 12. Superior court; term of office

15 Section 12. A. Judges of the superior court in counties
16 having a population of less than ~~two~~ FOUR hundred ~~fifty~~ thousand
17 persons according to the most recent United States census shall
18 be elected by the qualified electors of their counties at the
19 general election. THROUGH DECEMBER 31, 2012, they shall hold
20 office for a regular term of four years except as provided by
21 this section from and after the first Monday in January next
22 succeeding their election, and until their successors are
23 elected and qualify. FOR ANY TERM BEGINNING ON OR AFTER JANUARY
24 1, 2013, THEY SHALL HOLD OFFICE FOR A REGULAR TERM OF EIGHT
25 YEARS EXCEPT AS PROVIDED BY THIS SECTION FROM AND AFTER THE
26 FIRST MONDAY IN JANUARY NEXT SUCCEEDING THEIR ELECTION, AND
27 UNTIL THEIR SUCCESSORS ARE ELECTED AND QUALIFY. The names of
28 all candidates for judge of the superior court in such counties
29 shall be placed on the regular ballot without partisan or other
30 designation except the division and title of the office.

31 B. The governor shall fill any vacancy in ~~such~~ counties
32 HAVING A POPULATION OF LESS THAN FOUR HUNDRED THOUSAND PERSONS
33 ACCORDING TO THE MOST RECENT UNITED STATES CENSUS by appointing
34 a person to serve until the election and qualification of a
35 successor. At the next succeeding general election following
36 the appointment of a person to fill a vacancy, a judge shall be
37 elected to serve for the remainder of the unexpired term.

38 C. THROUGH DECEMBER 31, 2012, judges of the superior
39 court in counties having a population of ~~two~~ FOUR hundred ~~fifty~~
40 thousand persons or more according to the most recent United
41 States census shall hold office for a regular term of four years
42 except as provided by this article. FOR ANY TERM BEGINNING ON
43 OR AFTER JANUARY 1, 2013, JUDGES OF THE SUPERIOR COURT IN
44 COUNTIES HAVING A POPULATION OF FOUR HUNDRED THOUSAND PERSONS OR
45 MORE ACCORDING TO THE MOST RECENT UNITED STATES CENSUS SHALL

1 HOLD OFFICE FOR A REGULAR TERM OF EIGHT YEARS EXCEPT AS PROVIDED
2 BY THIS ARTICLE.

3 28. Justices and judges: dual office holding;
4 political activity; practice of law

5 Section 28. Justices and judges of courts of record shall
6 not be eligible for any other public office or for any other
7 public employment during their term of office, except that they
8 may assume another judicial office, and upon qualifying
9 therefor, the office formerly held shall become vacant. No
10 justice or judge of any court of record shall practice law
11 during his continuance in office, nor shall he hold any office
12 in a political party or actively take part in any political
13 campaign other than his own for his reelection ~~or retention in~~
14 ~~office~~ REAPPOINTMENT. Any justice or judge who files nomination
15 papers for an elective office, other than for judge of the
16 superior court or a court of record inferior to the superior
17 court in a county having a population of less than ~~two~~ FOUR
18 hundred ~~fifty~~ thousand persons according to the most recent
19 United States census, forfeits his judicial office.

20 30. Courts of record

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

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

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

33 Section 35. A. All justices, judges, justices of the
34 peace and officers of any court who are holding office as such
35 by election or appointment at the time of the adoption of this
36 section ~~OR ANY AMENDMENT TO THIS SECTION~~ shall serve or continue
37 in office for the respective terms for which they are so elected
38 or for their respective unexpired terms, and until their
39 successors are elected or appointed and qualify or they are
40 ~~retained in office~~ REAPPOINTED AND RECONFIRMED pursuant to
41 section 38 of this article; ~~provided, however,~~ EXCEPT that any
42 justice or judge elected at the general election at which this
43 section is adopted shall serve for the term for which he is so
44 elected. The continued existence of any office heretofore
45 legally established or held shall not be abolished or repealed

1 by the adoption of this article. The statutes and rules
 2 relating to the authority, jurisdiction, practice and procedure
 3 of courts, judicial officers and offices in force at the time of
 4 the adoption of this article and not inconsistent herewith,
 5 shall, so far as applicable, apply to and govern such courts,
 6 judicial officers and offices until amended or repealed.

7 B. All judges of the superior court holding office by
 8 appointment or retention in counties with a population of ~~two~~
 9 ~~FOUR~~ hundred ~~fifty~~ thousand persons or more according to the
 10 most recent United States census at the time of the adoption of
 11 this amendment ~~OR ANY SUBSEQUENT AMENDMENT~~ to this section shall
 12 serve or continue in office for the respective terms for which
 13 they were appointed. Upon an incumbent vacating the office of
 14 judge of the superior court, whether by failing to file a
 15 declaration for ~~retention~~ REAPPOINTMENT, by ~~rejection by the~~
 16 ~~qualified electors of the county~~ NOT BEING REAPPOINTED or
 17 resignation, the appointment shall be pursuant to section 37 of
 18 this article.

19 36. Commission on appellate court appointments;
 20 terms, appointments and vacancies on commission

21 Section 36. A. ~~There shall be~~ A nonpartisan commission
 22 on appellate court appointments ~~which shall be composed of~~ IS
 23 ESTABLISHED AND CONSISTS OF THE FOLLOWING MEMBERS:

24 1. The chief justice of the supreme court, who shall be
 25 chairman. ~~—~~ IN THE EVENT OF THE ABSENCE OR INCAPACITY OF THE
 26 CHAIRMAN, THE SUPREME COURT SHALL APPOINT A JUSTICE OF THE
 27 SUPREME COURT TO SERVE IN THE CHIEF JUSTICE'S PLACE AND STEAD.

28 2. Five attorney members, who shall be nominated by the
 29 board of governors of the state bar of Arizona and appointed by
 30 the governor ~~with the advice and consent of the senate in the~~
 31 ~~manner prescribed by law, and ten nonattorney.~~ FOR EACH
 32 POSITION SUBJECT TO NOMINATION BY THE STATE BAR, THE STATE BAR
 33 SHALL SEND TO THE GOVERNOR THE NAMES OF AT LEAST THREE NOMINEES.
 34 THE MAJORITY OF NOMINEES SHALL BE FROM THE SAME POLITICAL PARTY
 35 AS THE GOVERNOR. IF THERE ARE NOT SUFFICIENT APPLICANTS TO SEND
 36 THE NAMES OF THREE NOMINEES FOR EACH OPENING TO THE GOVERNOR,
 37 THE STATE BAR SHALL SEND THE NAMES OF ALL QUALIFIED NOMINEES TO
 38 THE GOVERNOR. IF THE GOVERNOR FAILS TO APPOINT THE MEMBERS
 39 WITHIN SIXTY DAYS AFTER RECEIVING THE NAMES OF THE NOMINEES, THE
 40 STATE BAR SHALL FORWARD THE NAMES TO THE PRESIDENT OF THE
 41 SENATE, WHO SHALL MAKE THE APPOINTMENTS.

42 3. THIRTEEN members who shall be appointed by the
 43 governor ~~with the advice and consent of the senate in the manner~~
 44 ~~prescribed by law. At least ninety days prior to a term~~
 45 ~~expiring or within twenty-one days of a vacancy occurring for a~~

1 ~~nonattorney member on the commission for appellate court~~
2 ~~appointments, the governor shall appoint a nominating committee~~
3 ~~of nine members, not more than five of whom may be from the same~~
4 ~~political party.~~

5 B. The makeup of the ~~committee shall~~ COMMISSION ON
6 APPELLATE COURT APPOINTMENTS, to the extent feasible, SHALL
7 reflect the diversity of the population of the state. ~~Members~~
8 ~~shall not be attorneys and shall not hold any governmental~~
9 ~~office, elective or appointive, for profit. The committee shall~~
10 ~~provide public notice that a vacancy exists and shall solicit,~~
11 ~~review and forward to the governor all applications along with~~
12 ~~the committee's recommendations for appointment.~~

13 C. Attorney members of the commission shall have resided
14 in the state, ~~and~~ shall have been admitted to practice before
15 the supreme court for not less than five years AND SHALL BE
16 MEMBERS IN GOOD STANDING WITH THE STATE BAR. Not more than
17 three attorney members WHO ARE NOMINATED AND APPOINTED PURSUANT
18 TO SUBSECTION A, PARAGRAPH 2 shall be members of the same
19 political party. ~~and~~ Not more than two attorney members shall be
20 residents of any one county.

21 D. ~~Nonattorney~~ Members WHO ARE NOMINATED AND APPOINTED
22 PURSUANT TO SUBSECTION A, PARAGRAPH 3 shall have resided in the
23 state for not less than five years and NONE shall ~~not be judges,~~
24 BE SERVING CURRENTLY AS A JUDGE. NOT MORE THAN TWO OF THE
25 MEMBERS WHO ARE APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPH 3
26 SHALL BE ATTORNEYS WHO HAVE BEEN ADMITTED TO THE PRACTICE OF LAW
27 IN THIS STATE FOR NOT LESS THAN FIVE YEARS AND WHO ARE IN GOOD
28 STANDING WITH THE STATE BAR. NOT MORE THAN ONE OF THE MEMBERS
29 WHO IS APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPH 3 SHALL BE
30 A ~~retired judges or admitted to practice before the supreme~~
31 ~~court~~ JUDGE. Not more than ~~five nonattorney~~ NINE members WHO
32 ARE APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPH 3 shall be
33 members of the same political party. Not more than ~~two~~
34 ~~nonattorney members~~ SIX OF THE MEMBERS APPOINTED PURSUANT TO
35 SUBSECTION A, PARAGRAPH 3 shall be residents of any one county.

36 E. ~~None of~~ The attorney ~~or~~ AND nonattorney members of the
37 commission shall NOT hold any governmental office, elective or
38 appointive, for profit, and ~~no~~ AN attorney member OF THE
39 COMMISSION shall NOT be eligible for appointment to any judicial
40 office of the state until one year after ~~he~~ THE ATTORNEY MEMBER
41 ceases to be a member OF THE COMMISSION.

42 F. ~~Attorney~~ Members of the commission shall serve
43 ~~staggered~~ four-year terms ~~and nonattorney members shall serve~~
44 ~~staggered four-year terms.~~ THE TERMS OF MEMBERS WHO ARE
45 NOMINATED AND APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPH 2

1 EXPIRE ON THE FIRST MONDAY IN JANUARY OF 2015 AND EVERY FOUR
2 YEARS THEREAFTER. THE TERMS OF MEMBERS WHO ARE APPOINTED
3 PURSUANT TO SUBSECTION A, PARAGRAPH 3 EXPIRE ON JANUARY 1, 2013
4 AND EVERY TWO YEARS THEREAFTER.

5 G. Vacancies shall be filled for the unexpired terms in
6 the same manner as the original appointments, EXCEPT THAT IF A
7 VACANCY OCCURS IN A POSITION THAT IS SUBJECT TO NOMINATION BY
8 THE STATE BAR, THE STATE BAR SHALL SEND AT LEAST THREE NAMES TO
9 THE GOVERNOR TO ALLOW THE GOVERNOR TO MAKE THE REPLACEMENT
10 APPOINTMENT CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION.

11 ~~B.~~ H. No person other than the chief justice shall serve
12 at the same time as a member of more than one judicial
13 appointment commission.

14 ~~C.~~ I. In making ~~or confirming~~ appointments to the
15 appellate court commission, the governor, ~~the senate~~ and the
16 state bar shall endeavor to see that the commission reflects the
17 diversity of ~~Arizona's~~ THIS STATE'S population.

18 ~~In the event of the absence or incapacity of the chairman~~
19 ~~the supreme court shall appoint a justice thereof to serve in~~
20 ~~his place and stead.~~

21 ~~D.~~ J. ~~Prior to~~ BEFORE making recommendations to the
22 governor ~~as hereinafter provided~~, the commission shall conduct
23 investigations, hold public hearings and take public testimony.
24 An executive session as prescribed by rule may be held ~~upon~~ ON a
25 two-thirds vote of the members of the commission in a public
26 hearing. Final decisions as to recommendations shall be made
27 without regard to political affiliation in an impartial and
28 objective manner. The commission shall consider the diversity
29 of the state's population, however, the primary consideration
30 shall be merit. Voting shall be in a public hearing. The
31 expenses of meetings of the commission and the attendance of
32 members ~~thereof~~ for travel and subsistence shall be paid from
33 the general fund of the state as state officers are paid, ~~upon~~
34 ON claims approved by the chairman.

35 ~~E.~~ K. After public hearings, the supreme court shall
36 adopt rules of procedure for the commission on appellate court
37 appointments. IF THE COMMISSION ON APPELLATE COURT APPOINTMENTS
38 AND THE COMMISSION ON TRIAL COURT APPOINTMENTS PROPOSE BY A
39 MAJORITY VOTE OF EACH COMMISSION TO AMEND THE RULES, THE SUPREME
40 COURT SHALL ADOPT THE AMENDMENTS IF THE AMENDMENTS ARE LAWFUL.

41 ~~F.~~ ~~Notwithstanding the provisions of subsection A, the~~
42 ~~initial appointments for the five additional nonattorney members~~
43 ~~and the two additional attorney members of the commission shall~~
44 ~~be designated by the governor for staggered terms as follows:~~

- 1 ~~1. One appointment for a nonattorney member shall be for~~
- 2 ~~a one year term.~~
- 3 ~~2. Two appointments for nonattorney members shall be for~~
- 4 ~~a two year term.~~
- 5 ~~3. Two appointments for nonattorney members shall be for~~
- 6 ~~a three year term.~~
- 7 ~~4. One appointment for an attorney member shall be for a~~
- 8 ~~one year term.~~
- 9 ~~5. One appointments for an attorney member shall be for a~~
- 10 ~~two year term.~~
- 11 ~~G. The members currently serving on the commission may~~
- 12 ~~continue to serve until the expiration of their normal terms.~~
- 13 ~~All subsequent appointments shall be made as prescribed by this~~
- 14 ~~section.~~

15 37. Judicial vacancies and appointments; initial

16 terms; residence; age

17 Section 37. A. Within sixty days from the occurrence of

18 ~~a ANY~~ vacancy in the office of a justice or judge of ~~any court~~

19 ~~of record, except for vacancies occurring in the office of a~~

20 ~~judge of the superior court or a judge of a court of record~~

21 ~~inferior to the superior court~~ THE SUPREME COURT OR AN

22 INTERMEDIATE APPELLATE COURT OF RECORD, the commission on

23 appellate court appointments, ~~if the vacancy is in the supreme~~

24 ~~court or an intermediate appellate court of record,~~ shall submit

25 to the governor the names of not less than ~~three~~ SIX persons

26 nominated by it to fill ~~such~~ EACH vacancy. ~~, no more than two of~~

27 ~~whom shall be members of the same political party unless there~~

28 ~~are more than four such nominees, in which event not more than~~

29 ~~sixty percentum of such nominees shall be members of the same~~

30 ~~political party.~~ NOT ALL OF THE NOMINEES SHALL BE FROM THE SAME

31 POLITICAL PARTY, EXCEPT THAT IF SIX OR FEWER PERSONS APPLY, THE

32 COMMISSION SHALL NOMINATE ALL QUALIFIED APPLICANTS.

33 B. Within sixty days from the occurrence of ~~a ANY~~

34 vacancy in the office of a judge of the superior court or a

35 judge of a court of record inferior to the superior court except

36 for vacancies occurring in the office of a judge of the superior

37 court or a judge of a court of record inferior to the superior

38 court in a county having a population of less than ~~two~~ FOUR

39 hundred ~~fifty~~ thousand persons according to the most recent

40 United States census, the commission on trial court appointments

41 for the county in which the vacancy occurs shall submit to the

42 governor the names of not less than ~~three~~ SEVEN persons

43 nominated by it to fill ~~such~~ EACH vacancy. ~~, no more than two of~~

44 ~~whom shall be members of the same political party unless there~~

45 ~~are more than four such nominees, in which event no more than~~

1 ~~sixty per centum of such nominees shall be members of the same~~
2 ~~political party.~~ NOT ALL OF THE NOMINEES SHALL BE FROM THE SAME
3 POLITICAL PARTY, EXCEPT THAT IF SIX OR FEWER PERSONS APPLY, THE
4 COMMISSION SHALL NOMINATE ALL QUALIFIED APPLICANTS. A nominee
5 shall be under sixty-five years of age at the time ~~his~~ THE
6 NOMINEE'S name is submitted to the governor. Judges of the
7 superior court shall be subject to ~~retention or rejection by a~~
8 ~~vote of the qualified electors of the county from which they~~
9 ~~were appointed at the general election~~ REAPPOINTMENT AND
10 RECONFIRMATION in the manner provided by section 38 of this
11 article.

12 C. A vacancy in the office of a justice or a judge ~~of~~
13 ~~such courts of record~~ shall be filled by appointment by the
14 governor without regard to political affiliation AND BASED ON
15 MERIT from one of the nominees whose names shall be submitted to
16 ~~him~~ THE GOVERNOR as hereinabove provided, SUBJECT TO SENATE
17 CONFIRMATION. THE SENATE MAY REJECT AN APPOINTMENT. IF THE
18 SENATE DOES NOT REJECT AN APPOINTEE BY A MAJORITY VOTE OF ITS
19 MEMBERS WITHIN SIXTY DAYS AFTER APPOINTMENT BY THE GOVERNOR,
20 THAT APPOINTEE SHALL TAKE OFFICE AS IF THE APPOINTEE HAD BEEN
21 CONFIRMED. THE PRESIDENT OF THE SENATE OR A MAJORITY OF THE
22 SENATE'S MEMBERS MAY CALL THE SENATE INTO SPECIAL SESSION AT ANY
23 TIME FOR THE PURPOSE OF CONSIDERING A JUDICIAL APPOINTMENT.

24 D. In making the appointment FOR A JUSTICE OR JUDGE, the
25 governor shall consider the diversity of the state's population
26 for an appellate court appointment and the diversity of the
27 county's population for a trial court appointment, however, the
28 primary consideration shall be merit. If the governor does not
29 appoint one of ~~such~~ THE nominees to fill ~~such~~ THE vacancy within
30 sixty days after their names are submitted to the governor by
31 ~~such~~ THE commission, the chief justice of the supreme court
32 ~~forthwith~~ shall PROMPTLY appoint on the basis of merit alone
33 without regard to political affiliation one of ~~such~~ THE nominees
34 to fill ~~such~~ THE vacancy. If ~~such~~ THE commission does not,
35 within sixty days after ~~such~~ THE vacancy occurs, submit the
36 names of nominees as ~~hereinabove~~ provided IN THIS SUBSECTION,
37 the governor ~~shall have the power to~~ MAY appoint any qualified
38 person to fill ~~such~~ THE vacancy at any time thereafter ~~prior to~~
39 BEFORE the time the names of the nominees to fill ~~such~~ THE
40 vacancy are submitted to the governor as ~~hereinabove~~ provided IN
41 THIS SUBSECTION.

42 E. Each APPOINTED justice or judge ~~so appointed~~ shall
43 initially hold office for a term ending sixty days following the
44 next regular general election after the expiration of a term of
45 ~~two~~ FOUR years in office. Thereafter, the terms of justices or

1 judges of the supreme court, AN INTERMEDIATE APPELLATE COURT and
2 the superior court shall be as provided by this article.

3 ~~D.~~ F. A person WHO IS appointed to fill a vacancy on an
4 intermediate appellate court or another court of record now
5 existing or hereafter established by law shall have been a
6 resident of the counties or county in which that vacancy exists
7 for at least one year ~~prior to his~~ BEFORE THE PERSON'S
8 appointment, in addition to possessing the other required
9 qualifications. A nominee shall be under sixty-five years of
10 age at the time ~~his~~ THE NOMINEE'S name is submitted to the
11 governor.

12 38. Declaration of desire for reappointment; failure
13 to file declaration

14 Section 38. A. EXCEPT FOR JUDGES OF THE SUPERIOR COURT
15 AND OTHER COURTS OF RECORD INFERIOR TO THE SUPERIOR COURT IN
16 COUNTIES HAVING A POPULATION OF LESS THAN FOUR HUNDRED THOUSAND
17 PERSONS ACCORDING TO THE UNITED STATES CENSUS, a justice or
18 judge ~~of the supreme court or an intermediate appellate court~~
19 ~~shall file in the office of the secretary of state, and a judge~~
20 ~~of the superior court or other court of record~~, including such
21 justices or judges who are holding office as such by election or
22 appointment at the time of the adoption of this section ~~except~~
23 ~~for judges of the superior court and other courts of record~~
24 ~~inferior to the superior court in counties having a population~~
25 ~~of less than two hundred fifty thousand persons, according to~~
26 ~~the United States census OR ANY AMENDMENT TO THIS SECTION~~, shall
27 file in the office of the ~~clerk of the board of supervisors of~~
28 ~~the county in which he regularly sits and resides~~ GOVERNOR, not
29 less than sixty nor more than ninety days ~~prior to the regular~~
30 ~~general election next preceding~~ BEFORE the expiration of ~~his~~ THE
31 JUSTICE'S OR JUDGE'S term of office, a declaration of ~~his~~ THE
32 JUSTICE'S OR JUDGE'S desire to be ~~retained in office, and the~~
33 ~~secretary of state shall certify to the several boards of~~
34 ~~supervisors the appropriate names of the candidate or candidates~~
35 ~~appearing on such declarations filed in his office~~ REAPPOINTED.

36 B. ~~The name of any justice or judge whose declaration is~~
37 ~~filed as provided in this section shall be placed on the~~
38 ~~appropriate official ballot at the next regular general election~~
39 ~~under a nonpartisan designation and in substantially the~~
40 ~~following form:~~

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

44 C. ~~If a majority of those voting on the question votes~~
45 ~~"No," then, upon the expiration of the term for which such~~

1 ~~justice or judge was serving, a vacancy shall exist, which shall~~
 2 ~~be filled as provided by this article. If a majority of those~~
 3 ~~voting on the question votes "Yes," such justice or judge shall~~
 4 ~~remain in office for another term, subject to removal as~~
 5 ~~provided by this constitution.~~

6 ~~D. The votes shall be counted and canvassed and the~~
 7 ~~result declared as in the case of state and county elections,~~
 8 ~~whereupon a certificate of retention or rejection of the~~
 9 ~~incumbent justice or judge shall be delivered to him by the~~
 10 ~~secretary of state or the clerk of the board of supervisors, as~~
 11 ~~the case may be.~~

12 B. IF THE GOVERNOR REAPPOINTS THE JUSTICE OR JUDGE, THE
 13 SENATE SHALL RECONFIRM THE JUSTICE OR JUDGE OR REJECT THE
 14 REAPPOINTMENT. IF THE SENATE DOES NOT REJECT THE JUSTICE'S OR
 15 JUDGE'S REAPPOINTMENT BY A MAJORITY VOTE OF ITS MEMBERS WITHIN
 16 SIXTY DAYS AFTER THE GOVERNOR REAPPOINTS THE JUSTICE OR JUDGE,
 17 THE JUSTICE OR JUDGE SHALL REMAIN IN OFFICE AS IF THE JUSTICE OR
 18 JUDGE HAD BEEN RECONFIRMED. IF THE GOVERNOR DOES NOT REAPPOINT
 19 THE JUSTICE OR JUDGE OR THE SENATE REJECTS THE REAPPOINTMENT, A
 20 VACANCY SHALL EXIST, WHICH SHALL BE FILLED AS PROVIDED BY THIS
 21 ARTICLE.

22 ~~E.~~ C. If a justice or judge fails to file a declaration
 23 of ~~his~~ THE JUSTICE'S OR JUDGE'S desire to be ~~retained in office~~
 24 REAPPOINTED, as required by this section, then ~~his~~ THE JUSTICE'S
 25 OR JUDGE'S office shall become vacant upon expiration of the
 26 term for which such justice or judge was serving.

27 39. Retirement of justices and judges; vacancies
 28 Section 39. On attaining the age of seventy years a
 29 justice or judge of a court of record shall retire and his
 30 judicial office shall be vacant, except as otherwise provided in
 31 section 35 of this article. In addition to becoming vacant as
 32 provided in this section, the office of a justice or judge of
 33 any court of record becomes vacant upon his death or his
 34 voluntary retirement pursuant to statute or his voluntary
 35 resignation, and also, as provided in section 38 of this
 36 article, upon the expiration of his term next following
 37 ~~a general election at which a majority of those voting on the~~
 38 ~~question of his retention vote in the negative or for which~~
 39 ~~general election he is required, but fails,~~ HIS FAILURE to file
 40 a declaration of his desire to be ~~retained in office~~ REAPPOINTED
 41 OR HIS FAILURE TO BE REAPPOINTED OR RECONFIRMED.

42 This section is alternative to and cumulative with the
 43 methods of removal of judges and justices provided in parts 1
 44 and 2 of article 8 and article 6.1 of this Constitution.

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

Section 40. Notwithstanding any provision of this article to the contrary, any county having a population of less than ~~two~~ FOUR 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~~ FOUR 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~~ FOUR 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~~ FOUR hundred ~~fifty~~ thousand persons or more according to the most recent United States census shall hold office for a regular term of ~~four~~ EIGHT years.

B. ~~There shall be~~ A nonpartisan commission on trial court appointments for each county having a population of ~~two~~ FOUR hundred ~~fifty~~ thousand persons or more according to the most recent United States census ~~which shall be composed~~ IS ESTABLISHED CONSISTING 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~~ OF THE SUPREME COURT 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.~~ FOR EACH POSITION SUBJECT TO NOMINATION BY THE STATE BAR, THE STATE BAR SHALL SEND TO THE GOVERNOR THE NAMES OF AT LEAST THREE NOMINEES. THE MAJORITY OF THE NOMINEES SHALL BE FROM THE SAME POLITICAL PARTY AS THE GOVERNOR. IF THERE ARE NOT SUFFICIENT APPLICANTS TO SEND THE NAMES OF THREE NOMINEES FOR EACH OPENING TO THE GOVERNOR, THE STATE BAR SHALL SEND THE NAMES OF ALL QUALIFIED NOMINEES TO THE GOVERNOR. IF THE GOVERNOR FAILS TO APPOINT THE MEMBERS

1 WITHIN SIXTY DAYS AFTER RECEIVING THE NAMES OF THE NOMINEES, THE
2 STATE BAR SHALL FORWARD THE NAMES TO THE PRESIDENT OF THE
3 SENATE, WHO SHALL MAKE THE APPOINTMENTS.

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

6 4. THREE MEMBERS WHO ARE APPOINTED BY THE GOVERNOR.

7 C. At least ninety days ~~prior to~~ BEFORE a term expiring
8 or within twenty-one days of a vacancy occurring for a
9 ~~nonattorney~~ member ~~on the commission for trial court~~
10 ~~appointments~~ WHO IS APPOINTED PURSUANT TO SUBSECTION B,
11 PARAGRAPH 3, the member of the board of supervisors from the
12 district in which the vacancy has occurred shall appoint a
13 nominating committee of seven members who reside in the
14 district, not ~~more than four~~ ALL of whom may be from the same
15 political party. The ~~make-up~~ MAKEUP of the committee shall, to
16 the extent feasible, SHALL reflect the diversity of the
17 population of the district. NOT MORE THAN TWO members shall ~~not~~
18 be attorneys and MEMBERS shall not hold any governmental office,
19 elective or appointive, for profit. The committee shall provide
20 public notice that a vacancy exists and shall solicit, review
21 and forward to the governor all applications along with the
22 committee's recommendations for appointment. The governor shall
23 appoint two persons from each supervisorial district who shall
24 not be of the same political party, ~~subject to confirmation by~~
25 ~~the senate in the manner prescribed by law.~~ IF NAMES ARE NOT
26 SUBMITTED TO THE GOVERNOR WITHIN SIXTY DAYS OF A VACANCY, THE
27 GOVERNOR MAY APPOINT ANY PERSON WHO OTHERWISE MEETS THE
28 QUALIFICATIONS.

29 D. NOT MORE THAN TWO OF THE MEMBERS WHO ARE APPOINTED
30 PURSUANT TO SUBSECTION B, PARAGRAPHS 3 AND 4 SHALL BE ATTORNEYS
31 WHO HAVE BEEN ADMITTED TO THE PRACTICE OF LAW IN THIS STATE FOR
32 NOT LESS THAN FIVE YEARS AND WHO ARE IN GOOD STANDING WITH THE
33 STATE BAR. NOT MORE THAN ONE OF THESE MEMBERS SHALL BE A
34 RETIRED JUDGE.

35 ~~D.~~ E. In making or confirming appointments to trial
36 court commissions, the governor, ~~the senate~~ and the state bar
37 shall endeavor to see that the commission reflects the diversity
38 of the county's population.

39 ~~E. Members of the commission shall serve staggered four~~
40 ~~year terms, except that initial appointments for the five~~
41 ~~additional nonattorney members and the two additional attorney~~
42 ~~members of the commission shall be designated by the governor as~~
43 ~~follows:~~

44 ~~1. One appointment for a nonattorney member shall be for~~
45 ~~a one-year term.~~

1 ~~2. Two appointments for nonattorney members shall be for~~
2 ~~a two year term.~~

3 ~~3. Two appointments for nonattorney members shall be for~~
4 ~~a three year term.~~

5 ~~4. One appointment for an attorney member shall be for a~~
6 ~~one year term.~~

7 ~~5. One appointment for an attorney member shall be for a~~
8 ~~two year term.~~

9 F. THE TERMS OF MEMBERS WHO ARE NOMINATED PURSUANT TO
10 SUBSECTION B, PARAGRAPH 2 EXPIRE ON THE FIRST MONDAY IN JANUARY
11 OF 2015 AND EVERY FOUR YEARS THEREAFTER. THE TERMS OF MEMBERS
12 WHO ARE NOMINATED PURSUANT TO SUBSECTION B, PARAGRAPHS 3 AND 4
13 EXPIRE ON JANUARY 1, 2013 AND EVERY TWO YEARS THEREAFTER.

14 ~~F.~~ G. Vacancies shall be filled for the unexpired terms
15 in the same manner as the original appointments, EXCEPT THAT IF
16 A VACANCY OCCURS IN A POSITION THAT IS SUBJECT TO NOMINATION BY
17 THE STATE BAR, THE STATE BAR SHALL SEND AT LEAST THREE NAMES TO
18 THE GOVERNOR TO ALLOW THE GOVERNOR TO MAKE THE REPLACEMENT
19 APPOINTMENT CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION.

20 ~~G.~~ H. Attorney members of the commission shall have
21 resided in this state, ~~and~~ shall have been admitted to practice
22 in this state by the supreme court for at least five years,
23 SHALL BE IN GOOD STANDING WITH THE STATE BAR and shall have
24 resided in the supervisory district from which they are
25 appointed for at least one year. Nonattorney members shall have
26 resided in this state for at least five years, ~~AND~~ shall have
27 resided in the supervisory district for at least one year
28 before being nominated ~~and shall not be judges, retired judges~~
29 ~~nor admitted to practice before the supreme court.~~ None of the
30 attorney or nonattorney members of the commission shall hold any
31 governmental office, elective or appointive, for profit and no
32 attorney member is eligible for appointment to any judicial
33 office of this state until one year after membership in the
34 commission terminates.

35 ~~H.~~ I. No person other than the chief justice shall serve
36 at the same time as a member of more than one judicial
37 appointment commission.

38 ~~I.~~ J. The commission shall submit the names of not less
39 than ~~three individuals~~ SEVEN PERSONS for nomination for the
40 office of the superior court judge pursuant to section 37 of
41 this article.

42 ~~J.~~ K. ~~Prior to~~ BEFORE making recommendations to the
43 governor, the commission shall conduct investigations, hold
44 public hearings and take public testimony. An executive session
45 as prescribed by rule may be held upon a two-thirds vote of the

1 members of the commission in a public hearing. Final decisions
 2 as to recommendations shall be made without regard to political
 3 affiliation in an impartial and objective manner. The
 4 commission shall consider the diversity of the county's
 5 population and the geographical distribution of the residences
 6 of the judges throughout the county, however, the primary
 7 consideration shall be merit. Voting shall be in a public
 8 hearing. The expenses of meetings of the commission and the
 9 attendance of members thereof for travel and subsistence shall
 10 be paid from the general fund of the state as state officers are
 11 paid, upon claims approved by the chairman.

12 ~~K.~~ L. After public hearings the supreme court shall
 13 adopt rules of procedure for the commission on trial court
 14 appointments. IF THE COMMISSION ON APPELLATE COURT APPOINTMENTS
 15 AND THE COMMISSION ON TRIAL COURT APPOINTMENTS PROPOSE BY A
 16 MAJORITY VOTE OF EACH COMMISSION TO AMEND THE RULES, THE SUPREME
 17 COURT SHALL ADOPT THE AMENDMENTS IF THE AMENDMENTS ARE LAWFUL.

18 ~~L. The members of the commission who were appointed~~
 19 ~~pursuant to section 36 of this article prior to the effective~~
 20 ~~date of this section may continue to serve until the expiration~~
 21 ~~of their normal terms. All subsequent appointments shall be~~
 22 ~~made as prescribed by this section.~~

23 42. Reappointment evaluation of justices and judges
 24 The supreme court shall adopt, after public hearings, and
 25 administer for all justices and judges who file a declaration to
 26 be ~~retained in office~~ REAPPOINTED, a process, established by
 27 court rules for evaluating judicial performance. The rules
 28 shall include written performance standards and performance
 29 reviews which survey opinions of persons who have knowledge of
 30 the justice's or judge's performance. The public shall be
 31 afforded a full and fair opportunity for participation in the
 32 evaluation process through public hearings, dissemination of
 33 evaluation reports to voters and any other methods as the court
 34 deems advisable.

35 2. The Secretary of State shall submit this proposition to the voters
 36 at the next general election as provided by article XXI, Constitution of
 37 Arizona.