

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE CONCURRENT RESOLUTION 1040

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.~~

32 3. ~~THIRTEEN~~ members who shall be appointed by the
33 governor ~~with the advice and consent of the senate in the manner~~
34 ~~prescribed by law. At least ninety days prior to a term~~
35 ~~expiring or within twenty-one days of a vacancy occurring for a~~
36 ~~nonattorney member on the commission for appellate court~~
37 ~~appointments, the governor shall appoint a nominating committee~~
38 ~~of nine members, not more than five of whom may be from the same~~
39 ~~political party.~~

40 B. The makeup of the ~~committee shall~~ ~~COMMISSION ON~~
41 ~~APPELLATE COURT APPOINTMENTS~~, to the extent feasible, ~~SHALL~~
42 reflect the diversity of the population of the state. ~~Members~~
43 ~~shall not be attorneys and shall not hold any governmental~~
44 ~~office, elective or appointive, for profit. The committee shall~~
45 ~~provide public notice that a vacancy exists and shall solicit,~~

1 ~~review and forward to the governor all applications along with~~
2 ~~the committee's recommendations for appointment.~~

3 C. Attorney members of the commission shall have resided
4 in the state, ~~and~~ shall have been admitted to practice before
5 the supreme court for not less than five years AND SHALL BE
6 MEMBERS IN GOOD STANDING WITH THE STATE BAR. Not more than
7 three attorney members WHO ARE NOMINATED AND APPOINTED PURSUANT
8 TO SUBSECTION A, PARAGRAPH 2 shall be members of the same
9 political party. ~~and~~ Not more than two attorney members shall
10 be residents of any one county.

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

26 E. ~~None of~~ The attorney ~~or~~ AND nonattorney members of the
27 commission shall NOT hold any governmental office, elective or
28 appointive, for profit, and ~~no~~ AN attorney member OF THE
29 COMMISSION shall NOT be eligible for appointment to any judicial
30 office of the state until one year after ~~he~~ THE ATTORNEY MEMBER
31 ceases to be a member OF THE COMMISSION.

32 F. ~~Attorney~~ Members of the commission ~~shall~~ serve
33 ~~staggered~~ four-year terms ~~and nonattorney members shall serve~~
34 ~~staggered four-year terms.~~ THE TERMS OF MEMBERS WHO ARE
35 NOMINATED AND APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPH 2
36 EXPIRE ON THE FIRST MONDAY IN JANUARY OF 2015 AND EVERY FOUR
37 YEARS THEREAFTER. THE TERMS OF MEMBERS WHO ARE APPOINTED
38 PURSUANT TO SUBSECTION A, PARAGRAPH 3 EXPIRE ON JANUARY 1, 2013
39 AND EVERY TWO YEARS THEREAFTER.

40 G. Vacancies shall be filled for the unexpired terms in
41 the same manner as the original appointments.

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

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

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

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

22 ~~E.~~ K. After public hearings, the supreme court shall
23 adopt rules of procedure for the commission on appellate court
24 appointments. ~~IF THE COMMISSION ON APPELLATE COURT APPOINTMENTS~~
25 ~~AND THE COMMISSION ON TRIAL COURT APPOINTMENTS PROPOSE BY A~~
26 ~~MAJORITY VOTE OF EACH COMMISSION TO AMEND THE RULES, THE SUPREME~~
27 ~~COURT SHALL ADOPT THE AMENDMENTS IF THE AMENDMENTS ARE LAWFUL.~~

28 ~~F.~~ ~~Notwithstanding the provisions of subsection A, the~~
29 ~~initial appointments for the five additional nonattorney members~~
30 ~~and the two additional attorney members of the commission shall~~
31 ~~be designated by the governor for staggered terms as follows:~~

32 ~~1. One appointment for a nonattorney member shall be for a~~
33 ~~one-year term.~~

34 ~~2. Two appointments for nonattorney members shall be for a~~
35 ~~two-year term.~~

36 ~~3. Two appointments for nonattorney members shall be for a~~
37 ~~three-year term.~~

38 ~~4. One appointment for an attorney member shall be for a~~
39 ~~one-year term.~~

40 ~~5. One appointments for an attorney member shall be for a~~
41 ~~two-year term.~~

42 ~~G.~~ ~~The members currently serving on the commission may~~
43 ~~continue to serve until the expiration of their normal terms.~~
44 ~~All subsequent appointments shall be made as prescribed by this~~
45 ~~section.~~

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

3 Section 37. A. Within sixty days from the occurrence of
4 ~~a~~ ANY vacancy in the office of a justice or judge of ~~any court~~
5 ~~of record, except for vacancies occurring in the office of a~~
6 ~~judge of the superior court or a judge of a court of record~~
7 ~~inferior to the superior court~~ THE SUPREME COURT OR AN
8 INTERMEDIATE APPELLATE COURT OF RECORD, the commission on
9 appellate court appointments, ~~if the vacancy is in the supreme~~
10 ~~court or an intermediate appellate court of record,~~ shall submit
11 to the governor the names of not less than ~~three~~ SIX persons
12 nominated by it to fill such EACH vacancy. ~~, no more than two of~~
13 ~~whom shall be members of the same political party unless there~~
14 ~~are more than four such nominees, in which event not more than~~
15 ~~sixty percentum of such nominees shall be members of the same~~
16 ~~political party.~~ NOT ALL OF THE NOMINEES SHALL BE FROM THE SAME
17 POLITICAL PARTY, EXCEPT THAT IF SIX OR FEWER PERSONS APPLY, THE
18 COMMISSION SHALL NOMINATE ALL QUALIFIED APPLICANTS.

19 B. Within sixty days from the occurrence of ~~a~~ ANY
20 vacancy in the office of a judge of the superior court or a
21 judge of a court of record inferior to the superior court except
22 for vacancies occurring in the office of a judge of the superior
23 court or a judge of a court of record inferior to the superior
24 court in a county having a population of less than ~~two~~ FOUR
25 hundred ~~fifty~~ thousand persons according to the most recent
26 United States census, the commission on trial court appointments
27 for the county in which the vacancy occurs shall submit to the
28 governor the names of not less than ~~three~~ SEVEN persons
29 nominated by it to fill such EACH vacancy. ~~, no more than two of~~
30 ~~whom shall be members of the same political party unless there~~
31 ~~are more than four such nominees, in which event no more than~~
32 ~~sixty per centum of such nominees shall be members of the same~~
33 ~~political party.~~ NOT ALL OF THE NOMINEES SHALL BE FROM THE SAME
34 POLITICAL PARTY, EXCEPT THAT IF SIX OR FEWER PERSONS APPLY, THE
35 COMMISSION SHALL NOMINATE ALL QUALIFIED APPLICANTS. A nominee
36 shall be under sixty-five years of age at the time ~~his~~ THE
37 NOMINEE'S name is submitted to the governor. Judges of the
38 superior court shall be subject to ~~retention or rejection by a~~
39 ~~vote of the qualified electors of the county from which they~~
40 ~~were appointed at the general election~~ REAPPOINTMENT AND
41 RECONFIRMATION in the manner provided by section 38 of this
42 article.

1 C. A vacancy in the office of a justice or a judge ~~of~~
2 ~~such courts of record~~ shall be filled by appointment by the
3 governor without regard to political affiliation **AND BASED ON**
4 **MERIT** from one of the nominees whose names shall be submitted to
5 ~~him~~ **THE GOVERNOR** as hereinabove provided, **SUBJECT TO SENATE**
6 **CONFIRMATION. THE SENATE MAY REJECT AN APPOINTMENT. IF THE**
7 **SENATE DOES NOT REJECT AN APPOINTEE BY A MAJORITY VOTE OF ITS**
8 **MEMBERS WITHIN SIXTY DAYS AFTER APPOINTMENT BY THE GOVERNOR,**
9 **THAT APPOINTEE SHALL TAKE OFFICE AS IF THE APPOINTEE HAD BEEN**
10 **CONFIRMED. THE PRESIDENT OF THE SENATE OR A MAJORITY OF THE**
11 **SENATE'S MEMBERS MAY CALL THE SENATE INTO SPECIAL SESSION AT ANY**
12 **TIME FOR THE PURPOSE OF CONSIDERING A JUDICIAL APPOINTMENT.**

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

31 E. Each **APPOINTED** justice or judge ~~so appointed~~ shall
32 initially hold office for a term ending sixty days following the
33 next regular general election after the expiration of a term of
34 ~~two~~ **FOUR** years in office. Thereafter, the terms of justices or
35 judges of the supreme court, **AN INTERMEDIATE APPELLATE COURT** and
36 the superior court shall be as provided by this article.

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

1 38. Declaration of desire for reappointment; failure
2 to file declaration

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

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

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

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

40 D. ~~The votes shall be counted and canvassed and the~~
41 ~~result declared as in the case of state and county elections,~~
42 ~~whereupon a certificate of retention or rejection of the~~
43 ~~incumbent justice or judge shall be delivered to him by the~~
44 ~~secretary of state or the clerk of the board of supervisors, as~~
45 ~~the case may be.~~

1 B. IF THE GOVERNOR REAPPOINTS THE JUSTICE OR JUDGE, THE
2 SENATE SHALL RECONFIRM THE JUSTICE OR JUDGE OR REJECT THE
3 REAPPOINTMENT. IF THE SENATE DOES NOT REJECT THE JUSTICE'S OR
4 JUDGE'S REAPPOINTMENT BY A MAJORITY VOTE OF ITS MEMBERS WITHIN
5 SIXTY DAYS AFTER THE GOVERNOR REAPPOINTS THE JUSTICE OR JUDGE,
6 THE JUSTICE OR JUDGE SHALL REMAIN IN OFFICE AS IF THE JUSTICE OR
7 JUDGE HAD BEEN RECONFIRMED. IF THE GOVERNOR DOES NOT REAPPOINT
8 THE JUSTICE OR JUDGE OR THE SENATE REJECTS THE REAPPOINTMENT, A
9 VACANCY SHALL EXIST, WHICH SHALL BE FILLED AS PROVIDED BY THIS
10 ARTICLE.

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

16 39. Retirement of justices and judges; vacancies

17 Section 39. On attaining the age of seventy years a
18 justice or judge of a court of record shall retire and his
19 judicial office shall be vacant, except as otherwise provided in
20 section 35 of this article. In addition to becoming vacant as
21 provided in this section, the office of a justice or judge of
22 any court of record becomes vacant upon his death or his
23 voluntary retirement pursuant to statute or his voluntary
24 resignation, and also, as provided in section 38 of this
25 article, upon the expiration of his term next following
26 ~~a general election at which a majority of those voting on the~~
27 ~~question of his retention vote in the negative or for which~~
28 ~~general election he is required, but fails,~~ HIS FAILURE to file
29 a declaration of his desire to be ~~retained in office~~ REAPPOINTED
30 OR HIS FAILURE TO BE REAPPOINTED OR RECONFIRMED.

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

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

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

1 electors approve, the provisions of sections 12, 28, 30, 35
2 through 39, 41 and 42 shall apply as if such county had a
3 population of ~~two~~ FOUR hundred ~~fifty~~ thousand persons or more.

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

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

11 B. ~~There shall be~~ A nonpartisan commission on trial court
12 appointments for each county having a population of ~~two~~ FOUR
13 hundred ~~fifty~~ thousand persons or more according to the most
14 recent United States census ~~which shall be composed~~ IS
15 ESTABLISHED CONSISTING of the following members:

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

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

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

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

30 C. At least ninety days ~~prior to~~ BEFORE a term expiring
31 or within twenty-one days of a vacancy occurring for a
32 ~~nonattorney~~ member ~~on the commission for trial court~~
33 ~~appointments~~ WHO IS APPOINTED PURSUANT TO SUBSECTION B,
34 PARAGRAPH 3, the member of the board of supervisors from the
35 district in which the vacancy has occurred shall appoint a
36 nominating committee of seven members who reside in the
37 district, not ~~more than four~~ ALL of whom may be from the same
38 political party. The ~~make-up~~ MAKEUP of the committee ~~shall~~, to
39 the extent feasible, SHALL reflect the diversity of the
40 population of the district. NOT MORE THAN TWO members shall ~~not~~
41 be attorneys and MEMBERS shall not hold any governmental office,
42 elective or appointive, for profit. The committee shall provide
43 public notice that a vacancy exists and shall solicit, review
44 and forward to the governor all applications along with the
45 committee's recommendations for appointment. The governor shall

1 appoint two persons from each supervisorial district who shall
2 not be of the same political party, ~~subject to confirmation by~~
3 ~~the senate in the manner prescribed by law~~. IF NAMES ARE NOT
4 SUBMITTED TO THE GOVERNOR WITHIN SIXTY DAYS OF A VACANCY, THE
5 GOVERNOR MAY APPOINT ANY PERSON WHO OTHERWISE MEETS THE
6 QUALIFICATIONS.

7 D. NOT MORE THAN TWO OF THE MEMBERS WHO ARE APPOINTED
8 PURSUANT TO SUBSECTION B, PARAGRAPHS 3 AND 4 SHALL BE ATTORNEYS
9 WHO HAVE BEEN ADMITTED TO THE PRACTICE OF LAW IN THIS STATE FOR
10 NOT LESS THAN FIVE YEARS AND WHO ARE IN GOOD STANDING WITH THE
11 STATE BAR. NOT MORE THAN ONE OF THESE MEMBERS SHALL BE A
12 RETIRED JUDGE.

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

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

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

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

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

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

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

32 F. THE TERMS OF MEMBERS WHO ARE NOMINATED PURSUANT TO
33 SUBSECTION B, PARAGRAPH 2 EXPIRE ON THE FIRST MONDAY IN JANUARY
34 OF 2015 AND EVERY FOUR YEARS THEREAFTER. THE TERMS OF MEMBERS
35 WHO ARE NOMINATED PURSUANT TO SUBSECTION B, PARAGRAPHS 3 AND 4
36 EXPIRE ON JANUARY 1, 2013 AND EVERY TWO YEARS THEREAFTER.

37 ~~F.~~ G. Vacancies shall be filled for the unexpired terms
38 in the same manner as the original appointments.

39 ~~G.~~ H. Attorney members of the commission shall have
40 resided in this state, ~~and~~ shall have been admitted to practice
41 in this state by the supreme court for at least five years,
42 SHALL BE IN GOOD STANDING WITH THE STATE BAR and shall have
43 resided in the supervisorial district from which they are
44 appointed for at least one year. Nonattorney members shall have
45 resided in this state for at least five years, ~~AND~~ shall have

1 resided in the supervisorial district for at least one year
2 before being nominated ~~and shall not be judges, retired judges~~
3 ~~nor admitted to practice before the supreme court.~~ None of the
4 attorney or nonattorney members of the commission shall hold any
5 governmental office, elective or appointive, for profit and no
6 attorney member is eligible for appointment to any judicial
7 office of this state until one year after membership in the
8 commission terminates.

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

12 ~~I.~~ J. The commission shall submit the names of not less
13 than ~~three individuals~~ SEVEN PERSONS for nomination for the
14 office of the superior court judge pursuant to section 37 of
15 this article.

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

31 ~~K.~~ L. After public hearings the supreme court shall
32 adopt rules of procedure for the commission on trial court
33 appointments. IF THE COMMISSION ON APPELLATE COURT APPOINTMENTS
34 AND THE COMMISSION ON TRIAL COURT APPOINTMENTS PROPOSE BY A
35 MAJORITY VOTE OF EACH COMMISSION TO AMEND THE RULES, THE SUPREME
36 COURT SHALL ADOPT THE AMENDMENTS IF THE AMENDMENTS ARE LAWFUL.

37 ~~L. The members of the commission who were appointed~~
38 ~~pursuant to section 36 of this article prior to the effective~~
39 ~~date of this section may continue to serve until the expiration~~
40 ~~of their normal terms. All subsequent appointments shall be~~
41 ~~made as prescribed by this section.~~

42 42. Reappointment evaluation of justices and judges

43 The supreme court shall adopt, after public hearings, and
44 administer for all justices and judges who file a declaration to
45 be ~~retained in office~~ REAPPOINTED, a process, established by

1 court rules for evaluating judicial performance. The rules
2 shall include written performance standards and performance
3 reviews which survey opinions of persons who have knowledge of
4 the justice's or judge's performance. The public shall be
5 afforded a full and fair opportunity for participation in the
6 evaluation process through public hearings, dissemination of
7 evaluation reports to voters and any other methods as the court
8 deems advisable.

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